

DISTRICT OF COLUMBIA OFFICIAL CODE

2001 Edition

TITLES 1 and 2

Government Organization
(Chapters 7 to End)

Government Administration
(Chapters 1 to 5)



40th ANNIVERSARY
of
HOME RULE



Digitized by the Internet Archive
in 2014

DISTRICT OF COLUMBIA

OFFICIAL CODE

2001 EDITION

Containing the Laws, general and permanent in their nature,
relating to or in force in the District of Columbia (Except such
laws as are of application in the General and Permanent
Laws of the United States) as of September 13, 2012.

VOLUME 3

Title 1

Government Organization
Chapters 7 to End

to

Title 2

Government Administration
Chapters 1 to 5



LexisNexis®

COPYRIGHT © 2001-2012

By

The District of Columbia

All Rights Reserved.

4633010

ISBN 978-0-7698-6577-5 (Volume 3)

ISBN 978-0-7698-6495-2 (Set)

Matthew Bender & Company, Inc.

701 East Water Street, Charlottesville, VA 22902

www.lexisnexis.com

Customer Service: 1-800-833-9844

LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

COUNCIL OF THE DISTRICT OF COLUMBIA

Phil Mendelson, *Chairman*

Yvette Alexander
Marion Barry
Anita Bonds
Muriel Bowser
David A. Catania
Mary M. Cheh

Jack Evans
Jim Graham
David Grosso
Kenyan R. McDuffie
Vincent B. Orange, Sr.
Tommy Wells

OFFICE OF THE GENERAL COUNSEL

Under Whose Direction This
Volume Has Been Prepared

V. David Zvenyach, *General Counsel*

John Hoellen, *Legislative Counsel*

Benjamin F. Bryant, Jr., *Codification Counsel*

Karen R. Barbour, *Legal Assistant*

*

Foreword to 2013 Commemorative Set

LexisNexis presents the 2013 republication of the District of Columbia Official Code, 2001 Edition to the D.C. bench and bar and to the citizens of the District of Columbia in a sincere belief that it will prove a material contribution to the orderly and efficient conduct of the government of the District and to the practice of law. LexisNexis is proud to help commemorate the 40th anniversary of Home Rule for the District of Columbia.

LexisNexis continues its tradition of excellence with its District of Columbia Official Code, 2001 Edition. This 2013 Volume 3 replaces any existing Volume 3 of the 2001 Edition and its 2012 Supplement, both of which may now be discarded, recycled, or retained for historical reference. Future supplements will be keyed to this 2013 Volume and not to any of its predecessors.

The District of Columbia Official Code, 2001 Edition, represents the eighth compilation of the laws of the District of Columbia and reflects an extensive renumbering of the 1981 Edition. Users should consult the historical citations at the end of each statute, and corresponding amendment notes, as guides to legislative currency. Research features such as case annotations, section references, effect of legislation notes, editor's notes, and the comprehensive index have been prepared by LexisNexis. Your set is kept up to date through regular supplementation, free access to the on-line Official Code at <http://www.lexisnexis.com/hottopics/dccode> and the periodic replacement of volumes. All case citations are Shepardized for accuracy and continued relevance. LexisNexis also publishes a District of Columbia Advance Legislative Service (ALS). The ALS gives you the latest session laws as they are passed, along with tables showing you which sections of the Code are affected.

We actively solicit your comments and suggestions. If you have questions or comments about the statutes, or if you have suggestions regarding index improvements, please write to us or call us toll-free at 1-800-833-9844; fax us toll free at 1-800-643-1280; E-mail us at customersupport@bender.com; or visit our website at <http://www.lexisnexis.com>. By providing us with your informed comments, you will be assured of having a working tool which increases in value each year.

LEXISNEXIS

June 2013

PREFACE TO THE 2001 EDITION

The 2001 Edition of the District of Columbia Official Code marks the eighth time that a compilation of the laws of the District of Columbia has been published by, or under the authority of, the government of the District of Columbia or that of the United States. The District of Columbia Code was first published in 1929; eleven years later, the Second Edition (1940) was published; another eleven years later, the Third Edition (1951); ten years later, the Fourth Edition (1961); six years later, the Fifth Edition (1967); another six years later, the Sixth Edition (1973); and 8 years later, the Seventh Edition (1981) was published. The time between the publication of the Seventh Edition and this Eighth Edition represents the longest period, by almost a decade, that the District of Columbia Code has gone unrevised in its 72 year history.

The District's Charter, which in 1973, established the current tripartite government of the District of Columbia, makes it incumbent upon the legislative branch to publish and codify every act of the Council, as the Council directs, upon becoming law, so that the residents of the District may have ready access to the laws by which they are governed. In 1973, however, the framers of the District's constitution could not have foreseen the incredible technological advances that would occur in the next 25 years nor the impact they have on the Code.

With the close of the 20th Century the world has witnessed the triumph of the Information Age, the rise of the World Wide Web, and the explosion of word processing and data storage technology. These phenomena have helped make the reproduction of legal text and data a fast, easy, and inexpensive enterprise, giving rise to a plethora of publishing mediums, and have made it a relatively simple task to reproduce existing legal text, including the District of Columbia Code. The rapid rise of the Computer Age has allowed virtually anyone with an ordinary personal computer to reproduce and compile the laws of the District of Columbia.

The laws of the District, however, are fluid, not stagnant, as they are amended several times each year. The quality and accuracy of publications not directed by the Council are beyond its control. The Council can only warrant the Code for which it has authorized publication. Therefore, in order to ensure that the residents of the District may distinguish between the compilation of District laws as produced under the direction of the elected officials of the District of Columbia and those of other persons, we have added the word "Official" to the title of the Code. Also to ensure that the Council never loses the right to publish its own laws, the government of the District of Columbia has retained the copyright to the District of Columbia Official Code.

The codified laws of the District of Columbia are created as a result of legislative action on the part of 13 individuals elected by the residents of the

District of Columbia to enact the laws that govern the District, and by the Congress. Once the legislative process is complete, the Council, through its delegation of authority to its Office of the General Counsel, codifies the laws in the form of this Code. In the process of codification, the Office of the General Counsel interprets any discrepancies in the drafting of the laws using commonly recognized rules of statutory construction. No other entity is authorized by law to make these determinations. As set forth by federal law and recognized by the Courts of the District of Columbia, this Code establishes *prima facie* evidence of the laws in force in the District of Columbia.¹ It is this continuity of authority, from enactment to codification to judicial review that gives this Code its authenticity and officiality as the content of the laws of the District of Columbia.

The 2001 Edition represents a recodification of the 1981 Edition in that it contains a reorganization of the presentation of the laws, inclusion of some previously omitted legal provisions, and the omission of non-substantive extraneous provisions. The theory behind the recodification is to purify the organization of the Code which over many decades has seen the haphazard mixing of original (“organic”) provisions of laws throughout the Code. In the 2001 Edition, we have established a system of codification that follows the legislative drafting principals established over many years in the Council’s Office of the General Counsel.

The recodification is not an overhaul of the Code. Although a cleanup of the antiquated, repealed and omitted provisions is long overdue, it is not the province of the Office of the General Counsel to determine which laws should be expunged as obsolete. Such decisions should be left to a working group commissioned by the Council to recommend revisions to the Code. The Office of the General Counsel has simply separated the organic laws into discrete divisions and topical categories. As much as is possible, we have followed a rule that requires that all organic law remain intact: closely following the layout of the originating act. We have retained notes to repealed sections to aid in legal research and preserved the numbering style that was first introduced in the Second Edition. Thanks to the resourcefulness of the publisher and the Council’s Office of the General Counsel staff, we have corrected provisions of law erroneously added to, or deleted from, prior editions.

The Code is organized into eight Divisions of practical law: government organization; judicial organization; decedent estates; criminal law; business law; education; property; and general laws. Each division is subdivided by subject matter called **Titles**, organic laws, called **Chapters** and **Subchapters**, and finally, individual **Sections** representing the individual sections of organic law. Occasionally, **Subtitles** are used to organize chapters of organic law, **Units** to organize subchapters, and **Parts** and **Subparts** to organize the additional divisions within the organic law. One important change that the user will notice, and hopefully appreciate, is that the District’s Charter, the Home Rule Act, is codified in its entirety in one location so that the

1. See 1 U.S.C. § 204(b) (1994); *Sheetz v. District of Columbia*, 629 A.2d 515, 519 (D.C. 1993).

framework of the current District government can be readily found. We hope that the organization of the 2001 Edition of the District of Columbia Official Code will serve as a foundation for further refinement by future law revision commissions or their equivalent.

The 2001 Edition has been prepared under the supervision of Benjamin. F. Bryant, Jr., Codification Counsel, Office of the General Counsel, Council of the District of Columbia.

_____/s/_____

Linda W. Cropp

Chairman

Council of the District of Columbia

_____/s/_____

Charlotte Brookins-Hudson

General Counsel

Council of the District of Columbia

USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Official Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Official Code intended to increase the usefulness of the Code to the user.

TITLES OF THE DISTRICT OF COLUMBIA OFFICIAL CODE, 2001 EDITION

DIVISION I. GOVERNMENT OF DISTRICT

Title

1. Government Organization.
2. Government Administration.
3. District of Columbia Boards and Commissions.
4. Public Care Systems.
5. Police, Firefighters, Medical Examiner, and Forensic Sciences.
6. Housing and Building Restrictions and Regulations.
7. Human Health Care and Safety.
8. Environmental and Animal Control and Protection.
9. Transportation Systems.
10. Parks, Public Buildings, Grounds and Space.

DIVISION II. JUDICIARY AND JUDICIAL PROCEDURE

- *11. Organization and Jurisdiction of the Courts.
- *12. Right to Remedy.
- *13. Procedure Generally.
- *14. Proof.
- *15. Judgments and Executions; Fees and Costs.
- *16. Particular Actions, Proceedings and Matters.
- *17. Review.

DIVISION III. DECEDENTS' ESTATES AND FIDUCIARY RELATIONS

- *18. Wills.
- *19. Descent, Distribution, and Trusts.
- *20. Probate and Administration of Decedents' Estates.
- *21. Fiduciary Relations and Persons with Mental Illness.

DIVISION IV. CRIMINAL LAW AND PROCEDURE AND PRISONERS

22. Criminal Offenses and Penalties.
- *23. Criminal Procedure.
24. Prisoners and Their Treatment.

*Title has been enacted as law.

Title

DIVISION V. LOCAL BUSINESS AFFAIRS

- *25. Alcoholic Beverages.
- 26. Banks and Other Financial Institutions.
- 27. Civil Recovery by Merchants for Criminal Conduct.
- *28. Commercial Instruments and Transactions.
- *29. Business Organizations.
- 29A. Corporations [Repealed].
- 30. Hotels and Lodging Houses.
- 31. Insurance and Securities.
- 32. Labor.
- 33. Partnerships [Repealed].
- 34. Public Utilities.
- 35. Railroads and Other Carriers.
- 36. Trade Practices.
- 37. Weights, Measures, and Markets.

DIVISION VI. EDUCATION, LIBRARIES, AND PUBLIC INSTITUTIONS

- 38. Educational Institutions.
- 39. Libraries and Cultural Institutions.

DIVISION VII. PROPERTY

- 40. Liens.
- 41. Personal Property.
- 42. Real Property.

DIVISION VIII. GENERAL LAWS

- 43. Cemeteries and Crematories.
- 44. Charitable and Curative Institutions.
- 45. Compilation and Construction of Code.
- 46. Domestic Relations.
- *47. Taxation, Licensing, Permits, Assessments, and Fees.
- 48. Foods and Drugs.
- 49. Military.
- 50. Motor and Non-Motor Vehicles and Traffic.
- 51. Social Security.

*Title has been enacted as law.

CITE THIS BOOK

Thus: D.C. Official Code, § _____ (2001 Ed.)

Table of Contents

Title 1

Government Organization

Chapters 1 through 6 appear in Volume 2

CHAPTER

1. District of Columbia Government Development
2. District of Columbia Home Rule
3. Specified Governmental Authority
4. Delegate to the House of Representatives
5. Officers and Employees Generally
6. Merit Personnel System

Chapters 7 through 15 appear in this Volume

CHAPTER

PAGE

- | | |
|---|-----|
| 7. District of Columbia Employees Retirement Program Management | 1 |
| 8. District of Columbia Retirement Funds | 57 |
| 9. Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan | 83 |
| 10. Elections | 112 |
| 11. Election Campaigns; Lobbying; Conflict of Interest [Repealed] | 244 |
| 11A. Government Ethics and Accountability | 301 |
| 11B. Prohibition on Government Employee Engagement in Political Activity | 360 |
| 12. Notaries Public | 365 |
| 13. Surveyor | 374 |
| 14. Office of the Chief Technology Officer | 390 |
| 15. Reorganization of the District Since the Establishment of Home Rule | 398 |

Title 2

Government Administration

Chapters 1 through 5 appear in this volume

- | | |
|-------------------------------------|-----|
| 1. Inspections | 515 |
| 2. Contracts | 531 |
| 3. Procurement [Repealed] | 652 |
| 3A. Government Procurement | 703 |
| 3B. Other Procurement Matters | 768 |
| 4. Claims Against District | 792 |
| 5. Administrative Procedure | 819 |

Chapters 6 through 19 (end) appear in volume 4

CHAPTER

6. Codification and Publication of Acts, Resolutions, Rules, and Orders
7. Official Correspondence
8. Presidential Inaugural Ceremonies
9. Submission of State Energy Plans
10. National Capital Planning Commission
11. Washington Metropolitan Region Development
- 11A. Chesapeake Regional Olympic Games Authority
12. Business and Economic Development
- 12A. Verizon Center Sales Tax Revenue Bond Approval
13. Latino Community
- 13A. Office on Asian and Pacific Islander Affairs
- 13B. Office of Gay, Lesbian, Bisexual, and Transgender Affairs
- 13C. Office and Commission on African Affairs
14. Human Rights
15. Youth Affairs
16. Public Defender Service
17. Public Records Management
18. Administrative Review of Civil Infractions
- 18A. Office of Administrative Hearings
19. Government Language Accessibility

DIVISION I. GOVERNMENT OF DISTRICT.

TITLE 1. GOVERNMENT ORGANIZATION.

Chapter

- 7. District of Columbia Employees Retirement Program Management.
- 8. District of Columbia Retirement Funds.
- 9. Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan.
- 10. Elections.
- 11. Election Campaigns; Lobbying; Conflict of Interest [Repealed].
- 11A. Government Ethics and Accountability.
- 11B. Prohibition on Government Employee Engagement in Political Activity.
- 12. Notaries Public.
- 13. Surveyor.
- 14. Office of the Chief Technology Officer.
- 15. Reorganization of the District Since the Establishment of Home Rule.

CHAPTER 7. DISTRICT OF COLUMBIA EMPLOYEES RETIREMENT PROGRAM MANAGEMENT.

<i>Subchapter I. Findings; Purpose; Definitions</i>	Sec.	
Sec.		ment Fund resulting from disability retirements.
1-701. Findings; purpose.		
1-702. Definitions.		<i>Subchapter IV. Reporting and Disclosure Requirements</i>
<i>Subchapter II. Establishment of Retirement Board and Retirement Funds</i>		
1-711. District of Columbia Retirement Board.	1-731.	Personal financial disclosure by Board members.
1-712. District of Columbia Police Officers and Fire Fighters' Retirement Fund.	1-732.	Annual report.
1-713. District of Columbia Teachers' Retirement Fund.	1-733.	Retirement program summary description.
1-714. District of Columbia Judges' Retirement Fund.	1-734.	Filing reports and furnishing information to participants.
1-715. Management of Retirement Funds.	1-735.	Reporting of participants' benefit rights.
1-716. Payments from Retirement Funds.	1-736.	Public information.
	1-737.	Retention of records.
	1-738.	Additional information.
	1-739.	Criminal penalties.
<i>Subchapter III. Financing of Retirement Benefits</i>		<i>Subchapter V. Fiduciary Responsibility; Civil Sanctions</i>
1-721. Limitation on investment of Retirement Funds.	1-741.	Fiduciary responsibilities.
1-722. Determination of federal and District of Columbia payments to the Funds.	1-742.	Liability for breach of fiduciary duty.
1-723. Information about retirement programs.	1-743.	Exculpatory provisions; insurance.
1-724. Appropriations authorized as payments to the Funds.	1-744.	Prohibition against certain persons holding certain positions.
1-725. Reduction in federal payment to Police Officers and Fire Fighters' Retirement	1-745.	Bonding.
	1-746.	Limitation on actions.
	1-747.	Civil enforcement.
	1-748.	Claims procedure.

Subchapter VI. Denial of Claim for Retirement Benefits

Sec.
1-751. Procedure enumerated.

Sec.
1-752. Application of procedure.
1-753. Compliance by Mayor.

Subchapter I. Findings; Purpose; Definitions.

§ 1-701. Findings; purpose.

(a) The Congress finds that the retirement benefits authorized by various acts of Congress for the police officers, fire fighters, teachers, and judges of the District of Columbia have not been financed on an actuarially sound basis. Neither federal payments to the District nor District of Columbia appropriations have taken into account the long-term financial requirements of the District's retirement programs. As a result, the annual budget cost to the District of Columbia for annuities and refunds of deductions is growing at a rapid rate, and, in the case of the retirement program for police officers and fire fighters, is predicted to exceed the cost of salaries for active police officers and fire fighters by the year 2000.

(b) It is the purpose of this chapter:

(1) To establish separate retirement Funds for police officers and fire fighters, for teachers, and for judges of the District of Columbia;

(2) To establish a Retirement Board with responsibility for managing these Funds;

(3) To require that these Funds be managed on an actuarially sound basis in order to provide proper financing for the benefits to which the District's retired police officers, fire fighters, teachers, and judges are entitled;

(4) To require that the Retirement Board comply with reporting and disclosure requirements similar to those imposed under the Employee Retirement Income Security Act of 1974; and

(5) To provide for federal payments to these Funds to help finance, in part, the liabilities for retirement benefits incurred by the District of Columbia prior to the establishment of self-government under the District of Columbia Home Rule Act.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 101.)

Section references. — This section is referred to in §§ 1-901.02, 11-1561, 11-1564, and 11-1569.

Prior Codifications. — 1981 Ed., § 1-701.
1973 Ed., § 1-1801.

References in text. — "The Employee Retirement Income Security Act of 1974," referred to in (b)(4) is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829.

CASE NOTES

Due process.

Federal law applied to analysis of whether Reform Act's allocation of unfunded liability of District of Columbia pension plan deprived District of Columbia employees of protected property in violation of Fifth Amendment's

guarantee of substantive due process; however, even if Act were considered "local," employees failed to establish property interest warranting substantive protection under Fifth Amendment. 18 U.S.C. § 1346; U.S.C. Const.Amend. 5; D.C. Code 1981, § 1-701 et seq. District of

Columbia Retirement Bd. v. United States, 657
F. Supp. 428, 1987 U.S. Dist. LEXIS 2987
(1987).

§ 1-702. Definitions.

As used in this chapter:

- (1) The term “Mayor” means the Mayor of the District of Columbia.
- (2) The term “Council” means the Council of the District of Columbia.
- (3) The term “Speaker” means the Speaker of the House of Representatives.
- (4) The term “President pro tempore” means the President pro tempore of the Senate.
- (5) The term “Board” means the District of Columbia Retirement Board established by § 1-711.
- (6) The term “Custodian of Retirement Funds” means the Board, except that until such time as the members of the Board are first elected and the Board certifies pursuant to § 1-711(h) that it is assuming responsibility for the Funds established by this chapter, the term “Custodian of Retirement Funds” means the Director of the Office of Budget and Financial Management of the District of Columbia (established by Organization Order No. 30, Commissioner’s Order No. 72-80, April 5, 1972).
- (6A) The term “good cause” means board members not attending more than half of the scheduled board meetings in a 12 month period.
- (7) The term “retirement program” means:
 - (A) The program of annuities and other retirement and disability benefits for members and officers of the Metropolitan Police force and the Fire Department of the District of Columbia, but does not include the program of annuities and other retirement and disability benefits for members and officers of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division under the Policemen and Firemen’s Retirement and Disability Act (D.C. Official Code § 5-701 et seq.);
 - (B) The program of annuities and other retirement and disability benefits for judges of the courts of the District of Columbia under subchapter III of Chapter 15 of Title 11 of the District of Columbia Code; or
 - (C) The program of annuities and other retirement and disability benefits for teachers in the public day schools of the District of Columbia.
- (8) The term “state” means any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone.
- (9) The term “party in interest” means:
 - (A) Any person (including a member of the Board) having fiduciary responsibilities under this chapter;
 - (B) Any person providing services to a Fund;
 - (C) The government of the District of Columbia;
 - (D) An employee organization; and
 - (E) A spouse or domestic partner, ancestor, lineal descendant, or spouse

or domestic partner of a lineal descendant of any individual described in subparagraph (A) or (B) of this paragraph.

(10) The term “Fund” means the District of Columbia Police Officers and Fire Fighters’ Retirement Fund established by § 1-712, the District of Columbia Teachers’ Retirement Fund established by § 1-713, or the District of Columbia Judges’ Retirement Fund established by § 1-714.

(11) The term “current value” means fair market value where available (as determined in good faith by a fiduciary in accordance with regulations promulgated by the Board), or otherwise the fair value (as determined in good faith by a fiduciary in accordance with regulations promulgated by the Board), assuming an orderly liquidation at the time of such determination.

(12) The term “future value” means a liability for a given prior fiscal year expressed in terms of the price level expected to prevail in a given future fiscal year, adjusted at the rate of inflation used with regard to determinations made under § 1-722(a)(1).

(13) The term “qualified public accountant” means a person who is a certified public accountant, certified by a regulatory authority of a state.

(14) The term “enrolled actuary” means an actuary enrolled under subtitle C of Title III of the Employee Retirement Income Security Act of 1974.

(15) The term “security” means a security as defined in § 2(1) of the Securities Act of 1933 [15 U.S.C. § 77b].

(16) The term “employee organization” means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which individuals covered by a retirement program participate and which exists for the purpose, in whole or in part, of dealing with the government of the District of Columbia concerning such retirement program.

(17) The term “teacher” means a teacher as defined in § 38-2021.13.

(18) The term “judge” means a judge as defined in § 11-1561(1).

(19) The term “participant” does not include an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, to whom the Policemen and Firemen’s Retirement and Disability Act (D.C. Official Code, § 5-701 et seq.) applies; and, unless the context requires otherwise, the term “beneficiary” does not include a beneficiary under such Act of any such officer or member.

(20)(A) The term “fiduciary” means, except as otherwise provided in subparagraph (B) of this paragraph, any individual who, with respect to a Fund:

(i) Exercises any discretionary authority or discretionary control respecting management of such Fund or exercises any discretionary authority or discretionary control respecting management or disposition of its assets;

(ii) Renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of such Fund, or has any authority or responsibility to do so; or

(iii) Has any discretionary authority or discretionary responsibility in the administration of such Fund.

(B) If any money or other property of a Fund is invested in securities issued by an investment company registered under title I of An Act To provide

for the registration and regulation of investment companies and investment advisers, and for other purposes (15 U.S.C. § 80a-1 et seq.) (“Investment Company Act of 1940”), that investment shall not by itself cause the investment company or the investment company’s adviser or principal underwriter to be deemed to be a fiduciary or a party in interest as those terms are defined in this chapter. Nothing contained in this subparagraph shall limit the duties imposed on that investment company, investment adviser, or principal underwriter by any other law.

(21) The term “governing authority” means, without limitation, any statutes, laws, amendments, resolutions, rules, regulations, policies, and procedures that govern the management and administration of the retirement program and management and control of the Funds.

(22) The term “post employment benefit programs” means health insurance benefit plans applicable under § 1-621.01, health benefits plans authorized under § 1-621.05, life insurance benefits applicable under § 1-622.01, and life insurance benefits authorized under § 1-622.03.

(23) The term “Trust Document” means the document that contains all the current statutes, laws, resolutions, rules, regulations, policies, and procedures by which authority the Board shall administer the retirement program and manage and control the Funds.

(24) The term “pooled or commingled real estate investment vehicle” means any real estate investment structure or conveyance formed for the purpose of combining assets of multiple investors in order to achieve greater diversification than could be achieved by any single investor on a stand-alone basis.

(25) The term “domestic partner” shall have the same meaning as provided in § 32-701(3).

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 102; Mar. 24, 1990, D.C. Law 8-97, § 2(a), 37 DCR 1046; Apr. 3, 2001, D.C. Law 13-248, § 2(a), 48 DCR 655; Dec. 7, 2004, D.C. Law 15-205, § 1012(a), 51 DCR 8441; Apr. 8, 2005, D.C. Law 15-300, § 2(a), 52 DCR 1504; Apr. 7, 2006, D.C. Law 16-91, § 124, 52 DCR 10637; Sept. 12, 2008, D.C. Law 17-231, § 4, 55 DCR 6758.)

Cross references. — Police Officers and Fire Fighters’ Retirement Fund, allowable creditable service, deposits required by fund members to the Custodian of Retirement Funds, see § 5-704.

Police Officers and Fire Fighters’ Retirement Fund, reallocation of funds from the Policemen and Firemen’s Relief Fund, payment to the Custodian of Retirement Funds, see § 5-741.

Police Officers and Fire Fighters’ Retirement Fund, salary deductions and withholdings from fund members, redeposit by the District of Columbia Retirement Board, see § 5-706.

Retirement funds, “district government” and “district retirement program” defined, see § 1-801.02.

Spouse equity, retirement programs, see § 1-529.01 et seq.

Teachers’ Retirement Fund, allowable credit-

able service, deposits required by fund members to the Custodian of Retirement Funds, see §§ 38-2021.09 and 38-2061.02.

Teachers’ Retirement Fund, restoration of terminated survivor benefits, repayment of liquidated annuity to the Custodian of Retirement Funds for redeposit, see §§ 38-2021.05 and 38-2021.09.

Teachers’ Retirement Fund, salary deductions and withholdings from fund members, redeposit by the Custodian of Retirement Funds, see § 38-2021.01.

Section references. — This section is referred to in §§ 1-741 and 1-901.02.

Prior Codifications. — 1981 Ed., § 1-702. 1973 Ed., § 1-1802.

Effect of amendments. — D.C. Law 13-248 added par. (6A).

D.C. Law 15-205 added pars. (21), (22), and (23).

D.C. Law 15-300 added par. (24).

D.C. Law 16-91, in par. (24), validated previously made technical corrections.

D.C. Law 17-231, in par. (9)(E), substituted “spouse or domestic partner” for “spouse”; and added par. (25).

Emergency legislation. — For temporary (90 day) Office of Financial Operations and Systems reorganization, applicable upon enactment by Congress of section 139 of the fiscal year 2005 budget Request Act or enactment of other Congressional legislation authorizing the transfer of administration of the retirement plans, see §§ 1011 to 1015 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) Office of Financial Operations and Systems reorganization, applicable upon enactment by Congress of section 139 of the fiscal year 2005 budget Request Act or enactment of other Congressional legislation authorizing the transfer of administration of the retirement plans, see §§ 1011 to 1015 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 8-97. — Law 8-97 was introduced in Council and assigned Bill No. 8-267, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 19, 1989, and January 16, 1990, respectively. Signed by the Mayor on January 26, 1990, it was assigned Act No. 8-149 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-248. — Law 13-248, the “Retirement Reform Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-815, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-533 and transmitted to both Houses of Congress for its

review. D.C. Law 13-248 became effective on April 3, 2001.

Legislative history of Law 15-205. — Law 15-205, the “Fiscal Year 2005 Budget Support Act of 2004”, was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

Legislative history of Law 15-300. — Law 15-300, the “Retirement Reform Act Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-934, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-697 and transmitted to both Houses of Congress for its review. D.C. Law 15-300 became effective on April 8, 2005.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 1-301.45.

Short title. — Short title of subtitle B of title I of Law 15-205: Section 1011 of D.C. Law 15-205 provided that subtitle B of title I of the act may be cited as the Office of Financial Operations and Systems Reorganization Act of 2004.

References in text. — The “Executive Protective Service” was changed to “United States Secret Service Uniformed Division” in paragraphs (7)(A) and (19) by the Act of November 15, 1977, 91 Stat. 1371, Pub. L. 95-179.

“Subtitle C of Title III of the Employee Retirement Income Security Act of 1974,” referred to in (14) is codified at 29 U.S.C. § 1341 et seq. “Section 2(1) of the Securities Act of 1933,” referred to in (15) is codified at 15 U.S.C. § 77b.

Editor’s notes. — For conditional applicability of subtitle B of Title I of D.C. Law 15-205, see notes under § 1-911.04a.

Subchapter II. Establishment of Retirement Board and Retirement Funds.

§ 1-711. District of Columbia Retirement Board.

(a) There is established, as an independent agency of the government of the District of Columbia, a board of trustees to be known as the District of Columbia Retirement Board which shall have exclusive authority and discretion (subject to the requirements of this chapter) to manage and control the

Funds established by this chapter, and for implementation and administration of the retirement program and post employment benefit programs.

(b)(1)(A) The Board shall consist of 12 members selected as follows:

(i) One member or officer of the Metropolitan Police force of the District of Columbia, to be elected by the members and officers of the Metropolitan Police force;

(ii) One retired member or officer of the Metropolitan Police force to be elected by the retired members and officers of the Metropolitan Police force;

(iii) One member or officer of the Fire Department of the District of Columbia, to be elected by the members and officers of the Fire Department;

(iv) One retired member or officer of the Fire Department of the District of Columbia, to be elected by the retired members and officers of the Fire Department;

(v) One teacher in the public day schools of the District of Columbia, to be elected by the teachers of the public day schools of the District of Columbia;

(vi) One teacher in the public day schools of the District of Columbia who is retired, to be elected by the retired teachers of the public day schools of the District of Columbia;

(vii) One senior judge and an alternate senior judge appointed by the Joint Committee on Judicial Administration of the District of Columbia. For purposes of calculating the total number of members of the Board, the senior judge and the alternate senior judge combined shall constitute one member of the Board.

(viii) Three individuals appointed by the Council of the District of Columbia; and

(ix) Three individuals appointed by the Mayor.

(B) A vacancy on the Board shall be filled in the manner in which the original selection was made.

(C) Upon transfer of the assets of the Judges' Retirement Fund to the U.S. Secretary of the Treasury pursuant to Subtitle A of Title XI of the Balanced Budget Act of 1997, approved August 5, 1997 (P.L. 105-33; 111 Stat. 963), the senior judge and the alternative senior judge shall no longer serve on the Board. Thereafter, the Board shall consist of 12 members.

(2) The 1st election of the Board members described in sub-subparagraphs (i) through (vi) of subparagraph (A) of paragraph (1) of this subsection shall be conducted within 6 months after the date of the enactment of this chapter in accordance with regulations which the Mayor shall promulgate. Thereafter, elections shall be conducted by the Board. In any such election, voting shall be by secret ballot, and each individual to be represented on the Board by the winner of such election shall be eligible to vote in such election.

(3)(A) Members of the Board shall each serve a term of 4 years, except that a member selected to fill a vacancy occurring prior to the end of the term for which his predecessor was selected shall only serve until the end of such term. If the portion of the remaining term to be filled is one year or less, the member selected to fill the vacancy shall serve until the end of such term and shall serve a subsequent 4-year term. A member may serve after the expiration of his term until his successor has taken office.

(B) A vote of two-thirds of the members of the Board shall remove any Board member from office for good cause, after notice to the Board member.

(4) Repealed.

(5) Any individual who was selected as a member of the Board under sub-subparagraph (A)(i), (iii), or (v) of paragraph (1) of this subsection and who ceases to be a member or officer of the Metropolitan Police force, member or officer of the Fire Department, or a teacher, as the case may be, may not continue as a member of the Board.

(6) No member of the Board may hold or be a candidate for any elective office in the District of Columbia.

(7) A member of the Board shall not have any personal interest, direct or indirect, except as a participant in a retirement program, in any transaction involving assets of the Funds established by this chapter and shall otherwise comply with the standards of conduct established by subchapter V of this chapter.

(8) Not less than 2 members of the Board appointed by the Mayor and 1 member of the Board appointed by the Council under paragraph (1) of this subsection shall be individuals who have professional experience in the banking, insurance, or investment industry.

(9) Any member of the Board may be removed from the Board by a vote of two thirds of the members of the Board for a breach of fiduciary responsibility with respect to a Fund or for a violation of § 1-744.

(10) The Board shall elect 1 member of the Board to be Chairman of the Board. The Chairman shall be elected for a term of 1 year, but may be removed from such position by a vote of two thirds of the members of the Board.

(11) The Chief Financial Officer of the District of Columbia, his or her successor, or his or her designee, shall be an *ex officio* member of the Board, but shall not vote, shall not be eligible to be elected Chairman of the Board, and shall not be counted for purposes of a quorum. For purposes of continuity on the board of trustees, the Mayor shall notify the Board in writing if the designated *ex officio* member of the Board is replaced.

(c)(1) Subject to the availability of appropriations for that purpose, each member of the Board shall be entitled to receive the hourly equivalent of the annual rate of pay in effect for the highest step of grade DS-15 under Chapter 6 of this title for each hour that the member is engaged in the actual performance of duties vested in the Board, except that a member of the Board who is a full-time officer or employee of the District of Columbia or the United States shall not be entitled to receive pay under this subsection for performance of duties vested in the Board during the employee's regularly scheduled working hours, and the total amount to which a member may be entitled under this subsection during a year may not exceed \$10,000.

(2) Members of the Board who are employees of the District of Columbia shall be entitled to leave, without loss of pay, leave, or credit for time of service, while engaged in the actual performance of duties vested in the Board. To the extent that Board duties are performed by a District employee during other than the regularly scheduled working hours of the employee, the employee shall be entitled to receive pay in accordance with paragraph (1) of this subsection.

(3) Members of the Board who are eligible to receive compensation under this subsection are exempt from §§ 5-723(e), 38-2061.01, and 1-611.03(b) and (c) [subsection (c) repealed].

(4) The Board may participate in seminars, conventions, dinners, or similar activities at the expense of a bank, investment manager, brokerage firm, or other entity only if the principal purpose of the activity is to discuss financial matters for the benefit of the participants and beneficiaries of the Fund and the activity is of a nature normally provided free of charge to other institutional investors. Participation in the activities in accordance with this paragraph shall not constitute a violation of subchapter XVIII of Chapter 6 of this title. The Board shall provide a list of these activities, indicating the sponsor and date of each activity, as part of the annual report provided for in § 1-732.

(d)(1) The Board shall meet at least once each calendar quarter at a regular and specified time. It shall meet at such other times as the Chairman or any 3 members of the Board may prescribe.

(2) A majority of members shall constitute a quorum for the transaction of the business of the Board.

(3) Except as otherwise provided in this chapter, actions of the Board shall be determined by a majority vote of the members present and voting.

(e) The Board shall from time to time, or when necessary, promulgate and adopt rules, regulations, and resolutions, and issue directives for the management and administration of the retirement program and for management and control of the Funds. To efficiently administer and implement the retirement program and manage the Funds, the Board may make reasonable interpretations of and implement all governing authorities. All governing authorities shall comply with necessary qualification requirements set forth by the Internal Revenue Code as amended for governmental retirement plans. Governing authorities may constitute the Trust Document for the retirement program and the Funds. Prior to the enactment or adoption of any governing authority, the Retirement Board shall submit a written analysis of the proposed governing authority to the appropriate person including the Mayor, the Council of the District of Columbia, the Chief Financial Officer, the Chairman of the District of Columbia Public Charter School Board, the President of the Board of Education, or their successors, for purposes of fulfilling its fiduciary duties and for continued compliance with Internal Revenue Code qualification requirements.

(f)(1) All administrative expenses incurred by the Board in carrying out this chapter, including compensation for the members of the Board, shall be paid out of funds appropriated for such purpose.

(2) The budget prepared and submitted by the Mayor pursuant to § 1-204.42 shall include recommended expenditures at a reasonable level for the forthcoming fiscal year for the administrative expenses of the Board.

(3) The Mayor and the Council may establish the amount of funds which will be allocated to the Board for administrative expenses, but may not specify the purposes for which such funds may be expended or the amounts which may be expended for the various activities of the Board.

(g)(1) The Board shall engage the services of competent investment counsel or counsels each of whom shall be either:

(A) Registered under title II of An Act To provide for the registration and regulation of investment companies and investment advisers (15 U.S.C. § 80b-1 et seq.) (“Investment Advisers Act of 1940”);

(B) A bank, as defined in the Investment Advisers Act of 1940; or

(C) An insurance company qualified to perform investment advisory services under the laws of more than 1 state. The investment counsel or counsels shall be fiduciaries with respect to services rendered to the Board. This fiduciary relationship shall be specified in a written agreement between the investment counsel or counsels and the Board.

(2)(A) As an independent agency of the District government pursuant to this chapter and § 1-603.01(13), the Board may appoint any staff it considers necessary to carry out the responsibilities under this chapter. Except as provided under subsection (k) of this section, staff appointed by the Board shall be subject to Chapter 6 of Title 1.

(B) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant for a staff position shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Board unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the Board. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of residency annually to the Director of Personnel for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The Board shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.

(C) The Executive Director, who shall be appointed to manage the day-to-day operations of the Board, shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.

(h) Not more than 90 days after all initial members of the Board have been selected in accordance with subsection (b) of this section, the Board shall certify in writing to the Director of the Office of Budget and Financial Management of the District of Columbia that the Board is assuming responsibility for the Funds established by this chapter.

(i)(1) The Board shall have the authority to enter into contracts with the governments of the District of Columbia and the United States and other public and private entities to the extent necessary to carry out its responsibilities under this chapter.

(2) The Board shall issue proposed rules governing the procurement of goods and services pursuant to the authority granted in paragraph (1) of this subsection. The proposed rules shall be submitted to the Council for a 45-day

period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(j) In accordance with § 1-809.01, after enactment of Chapter 8 of this title, the Board shall continue to discharge its duties and responsibilities under the retirement program and to the Funds (as the duties and responsibilities are modified by the Retirement Protection Act), including the responsibility for federal benefit payments provided in § 1-903.05, until the Secretary of the U.S. Treasury provides notification to the District government as required under the Retirement Protection Act.

(k) Staff appointed by the Board pursuant to subsection (g)(2) of this section shall not be subject to the provisions of subchapter XI of Chapter 6 of this title. The Board shall have exclusive authority to establish classification and compensation policy for staff appointed by the Board, provided that staff shall not be paid at a rate greater than the highest level authorized for nonunion workers in the District Service schedule. The Board shall establish by regulation a new compensation system for staff appointed by the Board within one year of October 20, 1999. Until a new compensation system is established by regulation, staff appointed by the Board shall be subject to the compensation policy applicable prior to October 20, 1999. The Board shall have exclusive authority to establish by regulation alternative benefits requirements for its employees to insure an efficient system of personnel administration and to recruit and retain highly qualified personnel.

(l) Within 30 days after December 7, 2004, the Board, in consultation with the Chief Financial Officer, shall determine the time and methodology for transferring the necessary functional responsibilities, as defined by rules and regulations issued by the Board from the Office of Payroll and Retirement Services of the Office of Financial Operations and Systems to the Board.

(m) The Board may reasonably rely upon records, statements, and representations from the Mayor, the Chief Financial Officer, the District of Columbia Public Charter School Board, the Secretary of the Board of Education, or its successor, a participant or beneficiary sworn in or acknowledged before an individual authorized to administer oaths, or presenting an affidavit, certification, or other reasonably reliable proof regarding any matter affecting the rights and privileges of a participant or beneficiary under the retirement program and post employment benefit programs.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 121; Mar. 24, 1990, D.C. Law 8-97, § 2(b), 37 DCR 1046; Sept. 10, 1992, D.C. Law 9-145, § 401(a), 39 DCR 4895; Mar. 16, 1993, D.C. Law 9-201, § 2, 39 DCR 9219; Oct. 29, 1993, 107 Stat. 1349, Pub. L. 103-127, § 139(a); Mar. 16, 1995, D.C. Law 10-214, § 2, 41 DCR 8034; Apr. 18, 1996, D.C. Law 11-110, § 4, 43 DCR 530; Aug. 5, 1997, 111 Stat. 758, Pub. L. 105-033, § 11252(c); Nov. 19, 1997, 111 Stat. 2184, Pub. L. 105-100, § 152(a); Sept. 18, 1998, D.C. Law 12-152, §§ 205, 206, 45 DCR 4045; Oct. 21, 1998, 112 Stat. 2421, Pub. L. 105-274, § 2(d)(1), (e)(3); Oct. 21, 1998, 112 Stat. 2681-536, Pub. L. 105-277, § 804(d)(1), (e)(3); Oct. 20, 1999, D.C. Law

13-38, § 902, 46 DCR 6373; Nov. 29, 1999, 113 Stat. 1512, Pub. L. 106-113, Para. 35; Apr. 3, 2001, D.C. Law 13-248, § 2(b), 48 DCR 655; Dec. 7, 2004, D.C. Law 15-205, § 1012(b), 51 DCR 8441; Apr. 8, 2005, D.C. Law 15-300, § 2(b), 52 DCR 1504; Apr. 7, 2006, D.C. Law 16-91, § 125(a), 52 DCR 10637; Mar. 2, 2007, D.C. Law 16-191, § 96, 53 DCR 6794; Feb. 6, 2008, D.C. Law 17-108, § 204, 54 DCR 10993.)

Cross references. — District of Columbia Retirement Board, administrative leave, see § 1-612.03.

Police and Firemen's Retirement and Relief Board, compensation of members, see § 1-611.08.

Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan, "retirement board" defined, see § 1-901.02.

Section references. — This section is referred to in §§ 1-702, 1-715, 1-721, and 1-911.04a.

Prior Codifications. — 1981 Ed., § 1-711. 1973 Ed., § 1-1811.

Effect of amendments. — Public Law 106-113, in par. (1) of subsec. (c), added "except that in the case of the Chairman of the Board and the Chairman of the Investment Committee of the Board, such amount may not exceed \$7,500 (beginning with 2000)".

D.C. Law 13-38 rewrote par. (11) of subsec. (b), which previously read:

"The Director of the Office of Budget and Financial Management of the District of Columbia shall be an ex officio member of the Board, but shall not vote, shall not be eligible to be elected Chairman of the Board, and shall not be counted for purposes of a quorum.";

in par. (2) of subsec. (d), substituted "A majority of members" for "Any 8 members"; added subsec. (k).

D.C. Law 13-248, in subsec. (b), rewrote par. (3) and repealed par. (4) which had read:

"(3)(A) Except as provided in subparagraph (B) of this paragraph, the members of the Board shall each serve a term of 4 years, except that a member selected to fill a vacancy occurring prior to the end of the term for which his predecessor was selected shall only serve until the end of such term. A member may serve after the expiration of his term until his successor has taken office.

"(B) Of the members of the Board who are first selected: (i) Two shall serve for a term of 1 year; (ii) three shall serve for a term of 2 years; (iii) three shall serve for a term of 3 years; and (iv) three shall serve for a term of 4 years; as determined by lot at the 1st meeting of the Board.

"(4) No individual shall serve more than 2 terms as a member of the Board, except that an individual serving less than 2 years of a term to which some other individual was originally

selected shall be eligible for 2 full terms as a member of the Board and an individual serving 2 years or more of a term to which some other individual was originally selected shall be eligible for only 1 full term as a member of the Board."

D.C. Law 15-205, in subsec. (a), substituted "by this chapter, and for implementation and administration of the retirement program and post employment benefit programs." for "by this chapter."; rewrote subsec. (e); and added subsecs. (l) and (m). Prior to amendment, subsec. (e) had read as follows: "(e) The Board shall from time to time promulgate rules and regulations, adopt resolutions, issue directives for the administration and transaction of its business and for the control of the Funds established by this chapter, and perform such other functions as may be necessary to carry out its responsibilities under this chapter."

D.C. Law 15-300, in subsec. (c)(1), substituted "may not exceed \$10,000" for "(beginning with 1998) may not exceed \$5,000"; in subsec. (g)(2), rewrote the last sentence which had read: "Staff appointed by the Board shall be subject to Chapter 6 of this title."; in subsec. (k), inserted: "The Board shall have exclusive authority to establish by regulation alternative benefits requirements for its employees to insure an efficient system of personnel administration and to recruit and retain highly qualified personnel."

D.C. Law 16-91, in subsec. (a), validated previously made technical corrections.

D.C. Law 16-191, in subsec. (c)(1), deleted "except that in the case of the Chairman of the Board and the Chairman of the Investment Committee of the Board, such amount may not exceed \$7,500 (beginning with 2000)" following "\$10,000".

D.C. Law 17-108, in subsec. (g)(2), designated the existing text as subpar. (A) and added subpars. (B) and (C).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the Retirement Reform Temporary Amendment Act of 1996 (D.C. Law 11-131, May 24, 1996, law notification 43 DCR 2965).

For temporary (225 day) amendment of section, see § 205 of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Temporary Act of 1997 (D.C. Law 12-58, March 20, 1998, law notification 45 DCR 2093).

For temporary (225 day) amendment of section, see § 2 of the Retirement Reform Temporary Amendment Act of 2000 (D.C. Law 13-205, March 31, 2001, law notification 48 DCR 3236).

Emergency legislation. — For temporary amendment of section, see § 205 of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Emergency Act of 1997 (D.C. Act 12-155, October 1, 1997, 44 DCR 5896), § 205 of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Congressional Review Emergency Act of 1997 (D.C. Act 12-240, January 13, 1998, 45 DCR 531), § 205 of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan and Fiscal Year 1998 Revised Budget Support Act of 1997 Technical Amendments Emergency Act of 1998 (D.C. Act 12-351, May 20, 1998, 45 DCR 3673), and § 205 of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan and Fiscal Year 1998 Revised Budget Support Act of 1997 Technical Amendments Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-432, August 6, 1998, 45 DCR 5920).

For temporary (90-day) amendment of section, see § 902 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

For temporary (90 day) amendment of section, see § 2 of the Retirement Reform Emergency Amendment Act of 2000 (D.C. Act 13-439, October 20, 2000, 47 DCR 8990).

For temporary (90 day) amendment of section, see § 2 of the Retirement Reform Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-526, January 11, 2001, 48 DCR 636).

Legislative history of Law 8-97. — For legislative history of D.C. Law 8-97, see Historical and Statutory Notes following § 1-702.

Legislative history of Law 9-134. — Law 9-134, the "Omnibus Budget Support Temporary Act of 1992," was introduced in Council and assigned Bill No. 9-485. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Approved without the signature of the Mayor on May 29, 1992, it was assigned Act No. 9-219 and transmitted to both Houses of Congress for its review. D.C. Law 9-134 became effective on July 23, 1992.

Legislative history of Law 9-145. — Law 9-145, the "Omnibus Budget Support Act of 1992," was introduced in Council and assigned Bill No. 9-222, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 12, 1992, and June 2, 1992, respectively. Approved without the signature of the Mayor on June 22, 1992, it was assigned Act No. 9-225 and transmitted to both Houses of Congress for its review. D.C.

Law 9-145 became effective on September 10, 1992.

Legislative history of Law 9-201. — Law 9-201, the "District of Columbia Retirement Board Judicial Appointment Act of 1992," was introduced in Council and assigned Bill No. 9-419, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-326 and transmitted to both Houses of Congress for its review. D.C. Law 9-201 became effective on March 16, 1993.

Legislative history of Law 10-214. — Law 10-214, the "District of Columbia Retirement Board Judicial Appointment Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-613, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-351 and transmitted to both Houses of Congress for its review. D.C. Law 10-214 became effective on March 16, 1995.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 12-152. — Law 12-152, the "Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Act of 1998," was introduced in Council and assigned Bill No. 12-386, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 7, 1998, and May 5, 1998, respectively. Signed by the Mayor on May 22, 1998, it was assigned Act No. 12-369 and transmitted to both Houses of Congress for its review. D.C. Law 12-152 became effective on September 18, 1998.

Legislative history of Law 13-38. — Law 13-38, the "Service Improvement and Fiscal Year 2000 Budget Support Act of 1999," was introduced in Council and assigned Bill No. 13-161, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 11, 1999, and June 22, 1999, respectively. Signed by the Mayor on July 8, 1999, it was assigned Act No. 13-111 and transmitted to both Houses of Congress for its review. D.C. Law 13-38 became effective on October 20, 1999.

Legislative history of Law 13-248. — For Law 13-248, see notes following § 1-702.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 1-702.

Legislative history of Law 15-300. — For Law 15-300, see notes following § 1-702.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 1-325.44.

Legislative history of Law 17-108. — For Law 17-108, see notes following § 1-209.05.

Effective date. — Section 2(d)(3) of Pub. L. 105-274 and § 804(d)(3) of Pub. L. 105-277 provided that § 11252(c) of Pub. L. 105-33, as renumbered by § 2(d)(1) of Pub. L. 105-274 and § 804(d)(1) of Pub. L. 105-277, shall take effect on the Dates on which the assets of the District of Columbia Judges Retirement Fund are transferred to the District of Columbia Judicial Retirement and Survivors Annuity Fund.

Resolutions. — Resolution 16-335, the “District of Columbia Retirement Board Procurement Rules Amendment Approval Resolution of 2005”, was approved effective October 14, 2005.

Editor’s notes. — Application of Law 12-152: Section 209 of D.C. Law 12-152 provided that the act shall apply as of October 1, 1997.

Repeal of Title IV of D.C. Law 9-145: Section 139(a) of Pub. L. 103-127, 107 Stat. 1349, provided that Title IV of the District of Columbia Omnibus Budget Support Act of 1992 (D.C. Law 9-145) is hereby repealed, and any provision of the District of Columbia Retirement Reform Act amended by such title is restored as if such title had not been enacted into law.

Section 139(b) of Pub. L. 103-127 provided that subsection (a) of that section shall apply beginning September 10, 1992.

For conditional applicability of subtitle B of Title I of D.C. Law 15-205, see notes under § 1-911.04a.

§ 1-712. District of Columbia Police Officers and Fire Fighters’ Retirement Fund.

(a) There is established a fund to be known as the District of Columbia Police Officers and Fire Fighters’ Retirement Fund into which shall be deposited the following, which shall constitute the assets of the Fund:

(1) Any amount paid to the Custodian of Retirement Funds pursuant to the last sentence of § 5-706(a) or to § 5-704(e)(1) or to § 5-741;

(2) Any amount appropriated for such Fund under subchapter III of this chapter; and

(3) Any return on investment of the assets of such Fund.

(b) After September 30, 1979, or after the end of the 30-day period beginning on the date on which funds are first appropriated to the District of Columbia Police Officers and Fire Fighters’ Retirement Fund, whichever is later, all payments of annuities and other retirement and disability benefits (including refunds and lump-sum payments) under the Policemen and Firemen’s Retirement and Disability Act (§ 5-701 et seq.) shall be made from the Fund (except for any such payment which is made to an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, or to a beneficiary of any such officer or member).

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 122(a).)

Cross references. — Police and firefighters retirement and disability, reestablishment of annuity, redeposit of previously refunded deductions, computation of interest, see § 5-717.

Police Officers and Fire Fighters’ Retirement Fund, allowable creditable service, deposits required by fund members to the Custodian of Retirement Funds, see § 5-704.

Police Officers and Fire Fighters’ Retirement

Fund, creditable service, service in military or naval forces, see § 5-742.

Police Officers and Fire Fighters’ Retirement Fund, reallocation of funds from the Policemen and Firemen’s Relief Fund, see § 5-741.

Police Officers and Fire Fighters’ Retirement Fund, salary deductions and withholdings from fund members, see § 5-706.

Police Officers, Fire Fighters, and Teachers

Retirement Benefit Replacement Plan, "Police Officers and Fire Fighters' Retirement Fund" defined, see § 1-901.02.

Section references. — This section is referred to in §§ 1-702, 1-752, and 5-544.01.

Prior Codifications. — 1981 Ed., § 1-712. 1973 Ed., § 1-1812.

Emergency legislation. — Section 5 of D.C. Law 11-218 repealed D.C. Act 11-369.

For temporary repeal of the Police Officers', Fire Fighters', and Teachers' Defined Benefit Pension Program Emergency Establishment Act of 1996 (D.C. Act 11-369, August 21, 1996, 41 DCR 4637), see § 5 of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

Legislative history of Law 11-218. — Law 11-218, the "New Hires Police Officers, Fire Fighters and Teachers Pension Modification Amendment Act," was introduced in Council and assigned Bill No. 11-316, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on July 3, 1996, and October 1, 1996, respectively. Signed by the Mayor on October 18, 1996, it was assigned Act No. 11-432 and transmitted to both Houses of Congress for its review. D.C. Law 11-218 became effective on April 9, 1997.

References in text. — The "Executive Protection Service" was changed to "United States Secret Service Uniformed Division," referred to in subsection (b), by the Act of November 15, 1977, 91 Stat. 1371, Pub. L. 95-179.

Editor's notes. — Lump-sum payments to certain retired employees: H.R. 3067, amended by H.R. 99-419, incorporated in Pub. L. 99-190 by § 101(c), the D.C. Appropriation Act, 1986, provided that notwithstanding any other provisions of law, in the case of each employee who retired from the Fire Department of the District of Columbia before February 15, 1980, and who is receiving from the date of enactment of this act an annuity based on service in the Fire Department, the District of Columbia Retirement Board shall cause to be paid not later than September 30, 1985, to each such employee a lump-sum payment equal to 3 percent of his or her annuity.

Section 101(d) of Pub. L. 99-591, the D.C. Appropriations Act, 1987, provided, that, notwithstanding any other provision of law, in the case of each employee who retired from the Fire Department of the District of Columbia between November 24, 1984, and April 13, 1985 (both dates inclusive), and who on the date of the enactment of this Act are receiving annuities based on service in the Fire Department, the District of Columbia Retirement Board shall cause to be paid not later than October 15, 1986, to each such employee a lump-sum payment equal to 3 percent of his or her annuity.

Federal contribution to retirement funds: Public Law 104-194, 110 Stat. 2356, the District of Columbia Appropriations Act, 1997, provided for the federal contribution to the Police Officers' and Fire Fighters', Teachers', and Judges' Retirement Funds, as authorized by the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 866; Public Law 96-122), \$52,070,000.

§ 1-713. District of Columbia Teachers' Retirement Fund.

(a)(1) There is established a fund to be known as the District of Columbia Teachers' Retirement Fund into which shall be deposited the following, which shall constitute the assets of the Fund:

(A) Any amount paid to the Custodian of Retirement Funds pursuant to § 38-2021.01 et seq., or under § 38-2061.02;

(B) Any asset transferred to such Fund under subsection (b) of this section;

(C) Any amount appropriated for such Fund under subchapter III of this chapter; and

(D) Any return on investment of assets of such Fund.

(2) Annuities and other retirement and disability benefits (including refunds and lump-sum payments) payable from the District of Columbia Teachers' Retirement and Annuity Fund established by § 38-2021.02 shall continue to be paid from such Fund until all amounts in such Fund have been expended or transferred under subsection (b) of this section to the District of Columbia Teachers' Retirement Fund, and thereafter such benefits shall be paid from the District of Columbia Teachers' Retirement Fund.

(b) Notwithstanding any other provision of law, any asset held in the

District of Columbia Teachers' Retirement and Annuity Fund established by § 38-2021.02 may be transferred to the District of Columbia Teachers' Retirement Fund established by subsection (a) of this section.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 123(a), (c).)

Cross references. — Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan, "teachers' retirement fund" defined, see § 1-901.02.

Retirement of public school teachers, purchase or reestablishment of annuity, computation of interest, see § 38-2023.14.

Teachers' Retirement Fund, allowable creditable service, deposits required by fund members, see § 38-2061.02.

Teachers' Retirement Fund, application of annuity increases, see § 38-2023.13.

Teachers' Retirement Fund, assignment, garnishment or attachment of funds, see § 38-2021.17.

Teachers' Retirement Fund, payment of annuities, see § 38-2023.04.

Teachers' Retirement Fund, records, accounts and reporting, see § 38-2021.14.

Teachers' Retirement Fund, restoration of terminated survivor benefits, repayment of liq-

uidated annuity, see §§ 38-2021.05 and 38-2021.09.

Section references. — This section is referred to in §§ 1-702, and 1

Prior Codifications. — 1981 Ed., § 1-713. 1973 Ed., § 1-1813.

Emergency legislation. — Section 5 of D.C. Law 11-218 repealed D.C. Act 11-369.

For temporary repeal of the Police Officers', Fire Fighters', and Teachers' Defined Benefit Pension Program Emergency Establishment Act of 1996 (D.C. Act 11-369, August 21, 1996, 41 DCR 4637), see § 5 of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

Legislative history of Law 11-218. — For legislative history of D.C. Law 11-218, see Historical and Statutory Notes following § 1-712.

CASE NOTES

Due process.

Federal law applied to analysis of whether Reform Act's allocation of unfunded liability of District of Columbia pension plan deprived District of Columbia employees of protected property in violation of Fifth Amendment's guarantee of substantive due process; however, even if Act were considered "local," employees failed to establish property interest warranting substantive protection under Fifth Amendment. 18 U.S.C. § 1346; U.S.C. Const.Amend.

5; D.C. Code 1981, § 1-701 et seq. District of Columbia Retirement Bd. v. United States, 657 F. Supp. 428, 1987 U.S. Dist. LEXIS 2987 (1987).

Statutory retirement and disability benefits were not "property" sufficient to trigger substantive constitutional protection. U.S. Const.Amend. 5, 14. District of Columbia Retirement Bd. v. United States, 657 F. Supp. 428, 1987 U.S. Dist. LEXIS 2987 (1987).

§ 1-714. District of Columbia Judges' Retirement Fund.

(a) There is established a fund to be known as the District of Columbia Judges' Retirement Fund into which shall be deposited the following (except as provided in § 11-1570), which shall constitute the assets of the Fund:

(1) Any amount deposited pursuant to subchapter III of Chapter 15 of Title 11;

(2) Any asset transferred to such Fund under subsection (b) of this section;

(3) Any amount appropriated for such Fund under subchapter III of this chapter; and

(4) Any return on investment of the assets of such Fund.

(b) Notwithstanding any other provision of law, any asset held in the District of Columbia Judicial Retirement and Survivors Annuity Fund may be

transferred to the District of Columbia Judges' Retirement Fund established by subsection (a) of this section.

(c)(1) Notwithstanding any other provision of this chapter or the amendments made by this chapter, upon the date the assets of the Retirement Fund described in subtitle A of title XI of the Balanced Budget Act of 1997 [Pub. L. 105-33] are transferred, the assets of the District of Columbia Judges' Retirement Fund established under subsection (a) shall be transferred to the District of Columbia Judicial Retirement and Survivors Annuity Fund under § 11-1570, and no amounts shall be deposited into the District of Columbia Judges' Retirement Fund after the date on which the assets are so transferred.

(2) In accordance with the direction of the Secretary, the District of Columbia Judges' Retirement Fund established under subsection (a) shall be continued at the Board and used for the purposes provided in this chapter until such time as all amounts in such Fund have been expended or transferred to the District of Columbia Judicial Retirement and Survivors Annuity Fund pursuant to paragraph (1) of this subsection. Thereafter any payments of retirement pay, annuities, refunds, and allowances for judicial personnel of the District of Columbia shall be paid from the District of Columbia Judicial Retirement and Survivors Annuity Fund in accordance with subchapter III of Chapter 15 of Title 11.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 124(a), (c); Aug. 5, 1997, 111 Stat. 758, Pub. L. 105-33, § 11252(a); Oct. 21, 1998, 112 Stat. 2419, Pub. L. 105-274, § 2(c); Oct. 21, 1998, 112 Stat. —, Pub. L. 105-277, § 804(c).)

Cross references. — District of Columbia judges, retirement, computation of retirement salary, see § 11-1564.

Judges' Retirement Fund, allocation of retirement benefits, see § 1-611.03.

Judges' Retirement Fund, transition from District of Columbia administration, see § 1-821.01.

Judicial Retirement and Survivors Annuity Fund, transfer of assets, see § 1-807.03.

Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan, "judges' retirement fund" and "retirement program" defined, see § 1-901.02.

Section references. — This section is referred to in §§ 1-702 and 1-752.

Prior Codifications. — 1981 Ed., § 1-714. 1973 Ed., § 1-1814.

Emergency legislation. — For temporary amendment of section, see § 2 of the Comprehensive Merit Personnel Act Annuity Offset

Emergency Amendment Act of 1997 (D.C. Act 12-123, August 1, 1997, 44 DCR 4652), and see § 2 of the Comprehensive Merit Personnel Act Annuity Offset Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-183, October 30, 1997, 44 DCR 6958).

References in text. — Subtitle A of title XI of the Balanced Budget Act of 1997, referred to in (c)(1), is subtitle A of title XI of Pub. L. 105-33, codified at Chapter 8 of Title 1.

Editor's notes. — Federal contribution to retirement funds: Public Law 104-194, 110 Stat. 2356, the District of Columbia Appropriations Act, 1997, provided for the federal contribution to the Police Officers' and Fire Fighters', Teachers', and Judges' Retirement Funds, as authorized by the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 866; Public Law 96-122), \$52,070,000.

§ 1-715. Management of Retirement Funds.

(a)(1) The District of Columbia Retirement Board shall be the custodian of the assets of each Fund established by this chapter and shall manage and invest such assets in accordance with this chapter. Except as provided in paragraph (2) of this subsection, all assets in the possession or control of the

Board shall be held in trust pursuant to a written trust instrument by 1 or more trustees appointed by the Board in its fiduciary capacity. Upon acceptance of the appointment, the trustee or trustees shall have authority and discretion to manage and control the assets assigned to it by the Board except to the extent that authority to manage, acquire, or dispose of assets of the Fund is retained by the Board or is delegated by the Board to 1 or more investment counsels pursuant to § 1-711(g)(1).

(2) The requirements of paragraph (1) of this subsection shall not apply to any assets of a Fund which consist of insurance contracts of policies issued by an insurance company qualified to do business in a state.

(b) The assets of each Fund shall be kept separate from other moneys which may be under the control of the District of Columbia Retirement Board, but need not be kept separate from the assets of the other Funds if the Board determines that commingling of such assets is advisable for investment purposes.

(c) The Board shall maintain, in an appropriate depository, a cash reserve for the Funds in an amount determined by the Board to be sufficient to meet current outlays for annuities and other retirement and disability benefits authorized to be paid from such Funds.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 125; Mar. 24, 1990, D.C. Law 8-97, § 2(c), 37 DCR 1046; Apr. 13, 2005, D.C. Law 15-354, § 3(a), 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 1-715. 1973 Ed., § 1-1815.

Effect of amendments. — D.C. Law 15-354 substituted “District of Columbia Retirement Board” for “Custodian of Retirement Funds”.

Legislative history of Law 8-97. — For legislative history of D.C. Law 8-97, see Historical and Statutory Notes following § 1-702.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 1-523.01.

Editor’s notes. — Independent audit of Retirement Board: Section 135 of Public Law 103-334, 108 Stat. 2588, the District of Colum-

bia Appropriations Act, 1995, provided that the District of Columbia Retirement Board shall enter into an agreement with an independent firm meeting certain qualifications to prepare and submit to the Retirement Board a written set of findings and recommendations not later than 6 months after the date of the enactment of this Act regarding the appropriateness and adequacy of the Retirement Board’s fiduciary, management, and investment practices and procedures, and provided for expenditure of funds.

§ 1-716. Payments from Retirement Funds.

The District of Columbia Retirement Board shall determine the amount of any payments to be made from the funds established by this act for annuities or any other retirement or disability benefits, including refunds and lump-sum payments, and the Board shall make such payments from the appropriated fund.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 126; Apr. 13, 2005, D.C. Law 15-354, § 3(b), 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 1-716. 1973 Ed., § 1-1816.

Effect of amendments. — D.C. Law 15-354 rewrote the section which had read:

“The Mayor shall notify the Custodian of Retirement Funds of any payments to be made from the Funds established by this chapter for annuities or other retirement or disability ben-

efits (including refunds and lump-sum payments), and the Custodian of Retirement Funds shall make such payments from the appropriate Fund.”

Legislative history of Law 15-354. — For Law 15-354, see notes following § 1-523.01.

Subchapter III. Financing of Retirement Benefits.

§ 1-721. Limitation on investment of Retirement Funds.

(a) Except as provided in subsection (d) of this section, the assets of the Funds may not be invested in the following:

(1) Interest-bearing bonds, notes, bills, or certificates of indebtedness of the government of the District of Columbia, the government of the Commonwealth of Virginia, or the government of the State of Maryland, or the government of any political subdivision thereof, or of any entity subject to control by any such government or any combination of any such governments;

(2) Obligations fully guaranteed as to the payment of both principal and interest by the government of the District of Columbia, the government of the Commonwealth of Virginia, or the government of the State of Maryland, or the government of any political subdivision thereof, or of any entity subject to control by any such government or any combination of any such governments;

(3) Real property in the District of Columbia, Virginia, or Maryland;

(4) Loans, mortgages, bonds, notes, bills, or certificates of indebtedness secured, in whole or in part, by real property in the District of Columbia, Virginia, or Maryland;

(5) Repealed.

(b) Until such time as the members of the Board are first selected and the Board certifies pursuant to § 1-711(h) that it is assuming responsibility for the Funds established by this chapter, the assets of such Funds may only be invested in the following:

(1) Interest-bearing bonds, notes, bills, or certificates of indebtedness of the United States government, or obligations fully guaranteed as the payment of both principal and interest by the United States government; and

(2) Interest-bearing certificates of deposit issued by national, state, or District of Columbia savings and loan institutions.

(c)(1) Any assets of the Funds invested after March 16, 1993, in stocks, securities, or other obligations of any institution or company doing business in or with Northern Ireland or with agencies or instrumentalities of Northern Ireland shall be invested to reflect advances to eliminate discrimination made by these institutions and companies pursuant to paragraph (2) of this subsection.

(2) The Mayor shall consider the following criteria, referred to as the MacBride Principles, to determine the advances to eliminate discrimination made by companies and institutions doing business in or with Northern Ireland or with agencies or instrumentalities of Northern Ireland:

(A) Increasing the representation of individuals from under represented religious groups in the work force, including managerial, supervisory, administrative, clerical, and technical jobs;

(B) Providing adequate security for the protection of minority employees both at the workplace and while traveling to and from work;

(C) Banning provocative religious or political emblems from the workplace;

(D) Publicly advertising all job openings and making special recruitment efforts to attract applicants from underrepresented religious groups;

(E) Providing that layoff, recall, and termination procedures should not in practice favor particular religious groups;

(F) Abolishing job reservations, apprenticeship restrictions, and differential employment criteria that discriminate on the basis of religion or ethnic origin;

(G) Developing training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees;

(H) Establishing procedures to assess, identify, and actively recruit minority employees with potential for further advancement; and

(I) Appointing senior management staff members to oversee affirmative action efforts and the setting up of timetables to carry out affirmative action principles.

(3)(A) On or before the 1st day of October of each year, the Mayor shall determine the existence of affirmative action taken by all institutions and companies doing business in or with Northern Ireland, in which Funds are or will be invested, in adhering to the MacBride Principles as enumerated in paragraph (2) of this subsection and provide an annual report of his or her findings for presentation to the Council, which report shall be made available for public inspection.

(B) In making the determination pursuant to subparagraph (A) of this paragraph, the Mayor may rely on reference sources, such as the Investor Responsibility Research Center (IRRC), in making a determination with respect to the affirmative action taken by the institutions and companies.

(d) The limitations on investments under subsection (a) of this section shall not apply to any of the following investments; provided, that the Board has no discretionary authority for investment decisions in specific geographical regions or political subdivisions, and further provided, that not more than 25% of the interests in pooled or commingled real estate investment vehicles is held by the Fund in:

(1) Pooled or commingled real estate investment vehicles;

(2) Publicly-traded real estate investment trusts and real estate operating companies; or

(3) Pooled or commingled real estate investment vehicles holding pass-through securities that contain mortgages, loans, bonds, notes and other similar instruments issued by private institutions, and that are guaranteed by the federal government or any of its agencies or government-sponsored enterprises.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 141; Mar. 8, 1984, D.C. Law 5-50, § 4, 30 DCR 5916; July 22, 1992, D.C. Law 9-127, § 4, 39 DCR 3828; Mar.

16, 1993, D.C. Law 9-185, § 4, 39 DCR 8221; June 28, 1994, D.C. Law 10-134, § 3, 41 DCR 2597; Apr. 8, 2005, D.C. Law 15-300, § 2(c), 52 DCR 1504.)

Prior Codifications. — 1981 Ed., § 1-721. 1973 Ed., § 1-1821.

Effect of amendments. — D.C. Law 15-300, in subsec. (a), rewrote the lead-in sentence which had read: "The assets of the Funds established by this chapter may not be invested in the following:"; and added subsec. (d).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of South Africa Sanctions Repeal Act 1993 (D.C. Law 10-75, March 8, 1994, law notification 41 DCR 1518).

Legislative history of Law 5-50. — Law 5-50 was introduced in Council and assigned Bill No. 5-18, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on September 6, 1983 and October 4, 1983, respectively. Signed by the Mayor on November 9, 1983, it was assigned Act No. 5-76 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-127. — Law 9-127, the "Namibia Sanctions Repeal Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-361, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Signed by the Mayor on May 28, 1992, it was assigned Act No. 9-211 and transmitted to both Houses of Congress for its review. D.C. Law 9-127 became effective on July 22, 1992.

Legislative history of Law 9-185. — Law 9-185, the "Public Funds Investment Policy in Financial Institutions and Companies Making Loans to or Doing Business with Northern Ireland Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-311, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 7, 1992, and October 6, 1992, respectively. Signed by the Mayor on November 2, 1992, it was assigned Act No. 9-305 and transmitted to both Houses of Congress for its review. D.C. Law 9-185 became effective on March 16, 1993.

Legislative history of Law 10-134. — Law 10-134, the "South Africa Sanctions Repeal Act of 1994," was introduced in Council and assigned Bill No. 10-427, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 28, 1994, it was assigned Act No. 10-234 and transmitted to both Houses of Congress for its review. D.C. Law 10-134 became effective on June 28, 1994.

Legislative history of Law 15-300. — For Law 15-300, see notes following § 1-702.

Delegation of Authority. — Delegation of authority under D.C. Law 9-185, "Public Funds Investment Policy in Financial Institutions and Companies Making Loans to or Doing Business with Northern Ireland Amendment Act of 1992," see Mayor's Order 93-76, June 16, 1993.

Editor's notes. — Independent audit of Retirement Board: Section 135 of Public Law 103-334, 108 Stat. 2588, the District of Columbia Appropriations Act, 1995, provided that the District of Columbia Retirement Board shall enter into an agreement with an independent firm meeting certain qualifications to prepare and submit to the Retirement Board a written set of findings and recommendations not later than 6 months after the date of enactment of this Act regarding the appropriateness and adequacy of the Retirement Board's fiduciary, management, and investment practices and procedures, and provided for expenditure of funds.

Board to conduct study: Section 6 of D.C. Law 8-97 provided that the Board shall conduct a study to determine the feasibility and advisability of direct investment in real estate in the District of Columbia, Maryland, and Virginia, including providing mortgage loans to participants and beneficiaries of the Funds for the purpose of financing residential home ownership for participants and beneficiaries of the Funds. The Board shall transmit the results of the study to the Council no later than 180 days from the effective date of this act.

§ 1-722. Determination of federal and District of Columbia payments to the Funds.

(a)(1) The Board shall engage an enrolled actuary, who may be the enrolled actuary engaged pursuant to § 1-732(a)(4)(A), who shall, on the basis of the entry age normal cost funding method and in accordance with generally accepted actuarial principles and practices, make the following determinations with respect to each Fund:

(A) At the times specified in paragraph (2) of this subsection, the actuary shall determine the level percentage of payroll, expressed as a percentage (hereinafter in this chapter referred to as the “net normal cost percentage”), which shall be the percentage such that the amount equal to the product of such percentage and the present value of future compensation for participants in the retirement program, if paid annually into the Fund from the date of hire of each participant in the retirement program until the date of such participant’s death, retirement, or other withdrawal from employment covered by the retirement program, is equal to the amount of the difference between (i) the present value of the future benefits payable from the Fund to such group, and (ii) the present value of all future employee contributions to the Fund;

(B) At the times specified in paragraph (2) of this subsection, the actuary shall determine the amount (hereinafter in this chapter referred to as the “accrued actuarial liability”) that is the difference between (i) the present value (as of the date of the determination) of the future benefits payable from the Fund, and (ii) the sum of the present value of all future employee contributions to the Fund, and the product of the net normal cost percentage and the present value of future compensation for participants in the retirement program;

(C) At the times specified in paragraph (2) of this subsection, the enrolled actuary shall determine the current value of the assets in the Fund;

(D) Each year, not later than 60 days prior to the date on which the Mayor is required to submit the annual budget for the government of the District of Columbia to the Council under § 1-204.42(a), the enrolled actuary shall determine:

(i) An estimate of the current annual active duty payroll;

(ii) The amount (hereinafter in this chapter referred to as the “future federal obligation”) that is the amount of the present value of the sum of the amounts authorized by § 1-724(a) to be appropriated to the Fund for fiscal years beginning on or after the date of the determination; and

(iii) The amount (hereinafter in this chapter referred to as the “net pay-as-you-go cost”) that is the difference between the amount of the obligation of the Fund during the next fiscal year for the payment of benefits payable from the Fund during such year, and the amount of employee contributions to the Fund for such year;

(E) The actuary shall also determine such additional information as the Board may require in order to make the determinations specified in paragraph (4) of this subsection and in subsection (b) of this section.

(2) The actuary engaged by the Board pursuant to paragraph (1) of this subsection shall make the determinations described in subparagraphs (A), (B), and (C) of such paragraph at the following times:

(A) Not later than 60 days after the date of the enactment of this chapter;

(B) Upon a request by the Board or by the Director of the Office of Management and Budget;

(C) Not later than the end of the 90-day period beginning on the 1st day

of the 3rd fiscal year occurring after the fiscal year in which the last such determination was made pursuant to any subparagraph of this paragraph.

(3)(A) On the basis of the most recent determinations made under paragraph (1) of this subsection, the enrolled actuary shall certify to the Board each year, at a time specified by the Board, the following information with respect to each Fund for the next fiscal year:

(i) The net normal cost, which shall be computed as the product of the net normal cost percentage and the estimate by the actuary of the current annual active duty payroll;

(ii) The accrued actuarial liability;

(iii) The current value of assets in the Fund;

(iv) The future federal obligation;

(v) The net pay-as-you-go cost;

(vi) The unfunded actuarial liability, which shall be computed as the difference between the accrued actuarial liability and the sum of the current value of the assets in the Fund, and the future federal obligation; and

(vii) The amount equal to the difference between the accrued actuarial liability as of January 2, 1975 (in future value as of the end of the fiscal year for which the determination is made), and the sum of the future federal obligation, the current value of previous federal contributions, and (in the case of the District of Columbia Teachers' Retirement Fund and the District of Columbia Judges' Retirement Fund) the current value of any assets in the predecessor to such Fund as of January 2, 1975, which amount is the difference between the amount that the federal government would pay to the Fund if the federal government had assumed the funding responsibility for all accrued unfunded liabilities as of January 2, 1975, and the amount actually to be paid by the federal government.

(B) For the purposes of sub-subparagraph (vi) of subparagraph (A) of this paragraph, the term "current value of the assets in the Fund" shall be deemed to include (i) the present value of any payments to be made to the Fund by the District in accordance with subsection (b)(1)(C)(i) of this section, and (ii) the present value of the amount of any reduction in the amount of future District payments to the Fund determined in accordance with subsection (b)(1)(D) of this section.

(4) The Board shall determine:

(A) The amount of the federal payment for the next fiscal year for each Fund authorized to be appropriated under § 1-724(a); and

(B) On the basis of the most recent certification submitted by the enrolled actuary under paragraph (3) of this subsection, the amount of the District payment for the next fiscal year for each Fund, as described under subsection (b) of this section.

(b)(1)(A) For the District payment for each Fund for each fiscal year through fiscal year 2004, the Board shall determine:

(i) The unfunded actuarial liability for such Fund as of the end of fiscal year 2004;

(ii) The unfunded actuarial liability as of October 1, 1979, in future value as of the end of fiscal year 2004 for such Fund; and

(iii) The amount equal to the lesser of the net pay-as-you-go cost, and the sum of the net normal cost and the amount of annual interest (computed at the valuation rate used in the determination under subsection (a)(3)(A)(vi) of this section.

(B) If the amount determined under subparagraph (A)(i) of this paragraph is equal to the amount determined under subparagraph (A)(ii) of this paragraph, the amount of the District payment for the fiscal year for such Fund shall be the amount determined under subparagraph (A)(iii) of this paragraph.

(C)(i) If the amount determined under subparagraph (A)(i) of this paragraph is greater than the amount of the District payment for the fiscal year for such Fund shall be the amount equal to the sum of the amount determine under subparagraph (A)(iii) of this paragraph, and the amount of the level amortization payment that, if paid annually into the Fund through the next 10 fiscal years (and accrued at the rate of interest used in determinations under subsection (a)(1) of this section), would reduce the amount determined under subparagraph (A)(i) of this paragraph to the amount determined under subparagraph (A)(ii) of this paragraph by the end of such 10 fiscal years.

(ii) A level amortization payment shall not be required under this subparagraph for any fiscal year to the extent that the difference between the amount determined under subparagraph (A)(i) of this paragraph and the amount determined under subparagraph (A)(ii) of this paragraph for such fiscal year is attributable to the failure of the federal government (other than a failure because of § 1-724(d) or § 1-725) to make all or any part of the federal payment to such Fund for any fiscal year.

(D) If the amount determined under subparagraph (A)(ii) of this paragraph is greater than the amount of the District payment for such Fund shall be the amount determined under subparagraph (A)(iii) of this paragraph reduced by the amount of level amortization payment that, if paid annually for the next 10 fiscal years, would have a future value of the end of fiscal year 2004 equal to the difference between the amount determined under subparagraph (A)(ii) of this paragraph and the amount determined under subparagraph (A)(i) of this paragraph.

(E) The amount of a District payment determined under subparagraph (C) of this paragraph may not exceed the amount determined under subparagraph (A)(iii) of this paragraph by more than 10 percent of the net pay-as-you-go cost, in the case of a payment to the District of Columbia Police Officers and Fire Fighters' Retirement Fund, or by more than 30 percent of the net pay-as-you-go cost, in the case of a payment to the District of Columbia Teacher's Retirement Fund or to the District of Columbia Judges' Retirement Fund.

(F) Determinations under subparagraph (A) of this paragraph shall be made in accordance with generally accepted actuarial principles and practices.

(2) The amount of the District payment to each Fund for fiscal year 2005 and for each fiscal year thereafter shall be the sum of (A) the net normal cost, and (B) the amount of annual interest (computed at the valuation rate used in

the determination pursuant to subsection (a)(1) of this section) on the unfunded actuarial liability.

(c)(1) On the basis of the most recent determinations made under subsection (a)(4) of this section, the Board shall:

(A) Not later than March 15th of each year through calendar year 2003, submit to the President and to the Congress a request for appropriation of the federal payment for the next fiscal year for each Fund; and

(B) Not less than 30 days prior to the date on which the Mayor is required to submit the annual budget for the government of the District of Columbia to the Council under § 1-204.42(a), certify to the Mayor and the Council the amount of the District payment for each Fund.

(2) The Mayor, in preparing each annual budget for the District of Columbia pursuant to § 1-204.42(a), and the Council of the District of Columbia, in adopting each annual budget in accordance with § 1-204.46, shall include in such budget not less than the full amount certified by the Board under paragraph (1)(B) of this subsection as being the amount of the District payment for the next fiscal year for each Fund. The Mayor and the Council may comment and make recommendations concerning any such amount certified by the Board.

(d)(1) Whenever any change in benefits under a retirement program is made, the Mayor shall engage an enrolled actuary, who may be the enrolled actuary engaged pursuant to § 1-732(a)(4)(A), to estimate the effect of such change in benefits over the next 5 fiscal years on: (A) The net normal cost percentage with respect to the retirement program; (B) the accrued actuarial liability with respect to the retirement program; (C) the net pay-as-you-go cost with respect to the retirement program; and (D) the level of the District payments to the Fund. The Mayor shall transmit the estimates of the actuary under the preceding sentence to the Board and to the Speaker and the President pro tempore, and such change in benefits may not go into effect until the end of the 30-day period beginning on the date such transmittals are completed. Whenever any change in benefits under a retirement program is made to either, but not both, the Metropolitan Police Department or the Fire and Emergency Medical Services Department, the Mayor shall engage an enrolled actuary to perform the same study contemporaneously for the other employee group for which the change was not made.

(2) In the event a change in benefits under a retirement program is made that increases the present value of benefits payable from the Fund, a level amortization payment for a period not to exceed 25 years shall be paid by the District to the Fund such that the present value of the sum of such level amortization payments equals the increase in the present value of such benefits. Such payments shall be made in addition to any other payment to the Fund required to be made by the District, and such increase in present value of benefits payable from the Fund and such payments shall be disregarded in calculating the unfunded actuarial liability under subsection (b)(1)(A) of this section.

(e) Whenever the amount authorized to be appropriated to the District of Columbia Police Officers and Fire Fighters' Retirement Fund for any fiscal

year under § 1-724(a)(1) is reduced under § 1-725(c), the District shall, beginning with the next fiscal year, pay a level amortization payment to such Fund for a period not to exceed 10 years such that the present value (determined as of the beginning of the fiscal year for which such authorization is reduced) of the sum of such level amortization payments equals the amount of such reduction. Such payments shall be made in addition to any other payment to such Fund required to be made by the District and shall be disregarded in calculating the unfunded actuarial liability under subsection (b)(1)(A) of this section.

(f) The Comptroller General of the United States shall have access to all books, accounts, records, reports, files, and other papers necessary to carry out the responsibility of the Comptroller General under § 47-118 and under § 1-724(e).

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 142; Sept. 10, 1992, D.C. Law 9-145, § 401(b), 39 DCR 4895; Oct. 29, 1993, 107 Stat. 1349, Pub. L. 103-127, § 139(a); Oct. 1, 2002, D.C. Law 14-190, § 3732, 49 DCR 6968.)

Cross references. — Police Officers and Fire Fighters' Retirement Fund, deposits by fund members to receive creditable service for approved leave, computation according to normal cost for new entrants in the Fund, see § 5-704.

Section references. — This section is referred to in §§ 1-702, 1-723 to 1-725, and 1-732.

Prior Codifications. — 1981 Ed., § 1-722. 1973 Ed., § 1-1822.

Effect of amendments. — D.C. Law 14-190 added the last sentence to subsec. (d)(1).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3632 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 9-134. — For legislative history of D.C. Law 9-134, see Historical and Statutory Notes following § 1-711.

Legislative history of Law 9-145. — For legislative history of D.C. Law 9-145, see Historical and Statutory Notes following § 1-711.

Legislative history of Law 10-135. — Law 10-135, the "Full Funding of Pension Liability Retirement Reform Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-515, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-239 and transmitted to both Houses of Congress for its review. D.C. Law 10-135 became effective on June 30, 1994.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

Short title. — Short title of subtitle C of title XXXVII of Law 14-190: Section 3731 of D.C.

Law 14-190 provided that subtitle C of title XXXVII of the act may be cited as the Retirement Reform Consolidated Actuarial Engagement Amendment Act of 2002.

References in text. — "The date of enactment of this chapter," referred to in (a)(2)(A), is November 17, 1979.

Section 47-118 1981 Ed., referred to in subsection (f) of this section, was repealed by § 5(b) of the Act of September 13, 1982, Pub. L. 97-258. Present provisions similar to repealed § 47-118 1981 Ed. are codified as § 1-207.36 and 31 U.S.C. § 715.

Editor's notes. — Repeal of Title IV of D.C. Law 9-145: Section 139(a) of Pub. L. 103-127, 107 Stat. 1349, provided that Title IV of the District of Columbia Omnibus Budget Support Act of 1992 (D.C. Law 9-145) is hereby repealed, and any provision of the District of Columbia Retirement Reform Act amended by such title is restored as if such title had not been enacted into law.

Section 139(b) of Pub. L. 103-127 provided that subsection (a) of that section shall apply beginning September 10, 1992.

Mayor authorized to issue actuarial study: Section 3 of D.C. Law 8-145 provided that to carry out the purposes of this act, the Mayor shall, pursuant to § 1-722(d)(1), appoint an enrolled actuary to perform the required actuarial study. The cost of the actuarial study shall be borne by the District of Columbia Police Officers' and Fire Fighters' Retirement Fund. The actuarial study shall be completed by June 10, 1990.

Accrual of benefits under D.C. Law 8-145: Section 4 of D.C. Law 8-145 provided that the increased benefits provided for in this act shall begin to accrue on April 10, 1990, but shall not

be paid until the change in benefits becomes effective pursuant to § 1-722(d)(1).

Mayor authorized to hire actuary: Section 143(b) of Pub. L. 104-194, 110 Stat. 2376, the District of Columbia Appropriations Act, 1997, provided that the Mayor, within 30 days after the enactment of this act, shall engage an enrolled actuary, to be paid by the District of Columbia Retirement Board, and shall comply with the requirements of §§ 1-722(d) and 1-724(d).

Full Funding of Pension Liability Retirement

Reform Amendment Act of 1994: Section 401 of D.C. Law 10-135 provided that notwithstanding any other law, title 1 §§ 101 (b)(1) and (2), and titles II and III, shall apply to any action or transaction taken or undertaken with respect to the Police Officers and Fire Fighters' Retirement Fund, the Teachers' Retirement Fund and the Judges' Retirement Fund on and after October 1, 1995.

Pursuant to the effective date language in § 501 of D.C. Law 10-135, the amendments made by that act have not been given effect.

§ 1-723. Information about retirement programs.

Upon a request of the Board, the Mayor, the Chief Financial Officer, the Chairman of the District of Columbia Public Charter School Board, the President of the Board of Education, or their successors shall furnish to the Board such information with respect to retirement programs and post employment benefit programs to which this chapter applies as the Board considers necessary to enable it to carry out its responsibilities under this chapter and to enable the enrolled actuary engaged pursuant to § 1-722(a) to carry out the responsibilities of the enrolled actuary under this chapter.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 143; Dec. 7, 2004, D.C. Law 15-205, § 1012(c), 51 DCR 8441.)

Prior Codifications. — 1981 Ed., § 1-723. 1973 Ed., § 1-1823.

Effect of amendments. — D.C. Law 15-205 substituted "Mayor, the Chief Financial Officer, the Chairman of the District of Columbia Public Charter School Board, the President of the Board of Education, or their successors shall furnish to the Board such information with respect to retirement programs and post em-

ployment benefit programs" for "Mayor shall furnish to the Board such information with respect to retirement programs".

Legislative history of Law 15-205. — For Law 15-205, see notes following § 1-702.

Editor's notes. — For conditional applicability of subtitle B of Title I of D.C. Law 15-205, see notes under § 1-911.04a.

§ 1-724. Appropriations authorized as payments to the Funds.

(a) There is authorized to be appropriated from the revenues of the United States for fiscal year 1980 and for each fiscal year thereafter through fiscal year 2004:

(1) As the federal payment to the District of Columbia Police Officers and Fire Fighters' Retirement Fund, the sum of \$34,170,000, reduced by the amount of any reduction required under § 1-725(c);

(2) As the federal payment to the District of Columbia Teachers' Retirement Fund, the sum of \$17,680,000; and

(3) As the federal payment to the District of Columbia Judges' Retirement Fund, the sum of \$220,000.

(b)(1) Amounts appropriated as a federal payment to a Fund established by this chapter shall not be subject to apportionment and shall be deposited in the appropriate Fund not more than 30 days after they are appropriated or 30 days

after the beginning of the fiscal year for which they are appropriated, whichever is later.

(2) Amounts appropriated as a District of Columbia payment to a Fund established by this chapter shall be deposited in the appropriate Fund in equal quarterly installments, the 1st of which shall be made not more than 30 days after amounts are appropriated or 30 days after the beginning of the fiscal year for which amounts are appropriated, whichever is later. The remaining installments shall be made on the 1st day of succeeding quarters of the fiscal year. If the District is late in making an installment, the Board shall charge the District daily interest, at a rate consonant with the Board's fiduciary duty.

(c) If at any time the balance of any Fund established by this chapter is not sufficient to meet all obligations against such Fund, such Fund shall have a claim on the revenues of the District of Columbia to the extent necessary to meet such obligations.

(d) If, for any fiscal year, the Mayor and the Council do not carry out the requirements of subsections (c)(2), (d), and (e) of § 1-722 with respect to a Fund, no funds authorized to be appropriated for such Fund by this section shall be available for such Fund for such fiscal year.

(e)(1) In the year 2004, the Comptroller General shall determine whether the federal share with respect to each Fund has been paid in full by payments made pursuant to appropriations authorized under subsection (a) of this section and, in the case of the District of Columbia Police Officers and Fire Fighters' Retirement Fund, by payments made or to be made under § 1-722(e).

(2) For the purposes of this subsection, the term "federal share", with respect to a retirement program, means the sum of:

(A) Eighty percent of the accrued unfunded liability as of October 1, 1979, for participants in the retirement program who retired before January 2, 1975, under a provision of law authorizing retirement and entitlement to an annuity based upon the years of creditable service of the participant (and for the beneficiaries of such participants under the retirement program); and

(B) Thirty-three and one-third percent of the accrued unfunded liability as of October 1, 1979, for participants in the retirement program who retired before January 2, 1975, under a provision of law authorizing retirement and entitlement to an annuity based upon a disease or disability from which the participant is suffering (and for the beneficiaries of such participants under the retirement program).

(f) Notwithstanding any other provision of this Act, no Federal payments may be made to any Fund established by this chapter for any fiscal year after fiscal year 1997.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 144; Mar. 24, 1990, D.C. Law 8-97, § 2(d), 37 DCR 1046; Aug. 5, 1997, 111 Stat. 730, Pub. L. 105-33, § 11084(a)(2).)

Section references. — This section is referred to in §§ 1-722 and 1-725.

Prior Codifications. — 1981 Ed., § 1-724.
1973 Ed., § 1-1824.

Legislative history of Law 8-97. — For

legislative history of D.C. Law 8-97, see Historical and Statutory Notes following § 1-702.

Legislative history of Law 10-135. — For legislative history of D.C. Law 10-135, see Historical and Statutory Notes following § 1-722.

References in text. — “This Act,” referred to in (f), is the Act of November 17, 1979, 93 Stat. 866, Pub. L. 96-122.

Editor’s notes. — Mayor authorized to hire actuary: Section 143(b) of Pub. L. 104-194, 110 Stat. 2376, the District of Columbia Appropriations Act, 1997, provided that the Mayor, within 30 days after the enactment of this act, shall engage an enrolled actuary, to be paid by the District of Columbia Retirement Board, and shall comply with the requirements of §§ 1-722(d) and 1-724(d).

Full Funding of Pension Liability Retirement

Reform Amendment Act of 1994: Section 401 of D.C. Law 10-135 provided that notwithstanding any other law, title 1 §§ 101 (b)(1) and (2), and titles II and III, shall apply to any action or transaction taken or undertaken with respect to the Police Officers and Fire Fighters’ Retirement Fund, the Teachers’ Retirement Fund and the Judges’ Retirement Fund on and after October 1, 1995.

Pursuant to the effective date language in § 501 of D.C. Law 10-135, the amendments made by that act have not been given effect.

CASE NOTES

Due process.

Statutory retirement and disability benefits were not “property” sufficient to trigger substantive constitutional protection. U.S.

Const.Amend. 5, 14. District of Columbia Retirement Bd. v. United States, 657 F. Supp. 428, 1987 U.S. Dist. LEXIS 2987 (1987).

§ 1-725. Reduction in federal payment to Police Officers and Fire Fighters’ Retirement Fund resulting from disability retirements.

(a)(1) After January 1st, and before March 1st, of each year beginning with calendar year 1984 and ending with calendar year 2004, the enrolled actuary engaged pursuant to § 1-722 shall, with respect to the District of Columbia Police Officers and Fire Fighters’ Retirement Fund:

(A) Determine, in accordance with paragraph (2) of this subsection, the disability retirement rate for the preceding calendar year; and

(B) Determine if such disability retirement rate for such preceding calendar year is greater than eight tenths of a percentage point.

(2) For the purposes of subparagraph (A) of paragraph (1) of this subsection, the disability retirement rate for the applicable calendar year shall be an amount equal to a fraction, the numerator of which is the number of officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia who first became officers or members on or before February 14, 1980, and who retired on disability during such applicable year under § 5-709(a) or § 5-710(a) (but such numerator shall not include any such officer or member whose retirement is ordered by a court of competent jurisdiction), and the denominator of which is the total number of such officers and members who were on active duty on January 1st of such applicable calendar year.

(3) The enrolled actuary shall report the determinations (including related documents and information) made under paragraph (1) of this subsection to the Board and to the Comptroller General of the United States not later than March 1st of each year.

(b) The Board shall transmit a copy of each such report by the enrolled actuary under subsection (a) of this section to the Speaker of the House of Representatives, the President pro tempore of the Senate, the chairman of the Committee on Governmental Affairs of the Senate, the chairman of the

Committee on the District of Columbia of the House of Representatives, the chairman of the Committee on Appropriations of the Senate, the chairman of the Committee on Appropriations of the House of Representatives, the Mayor of the District of Columbia, and the Council of the District of Columbia, not later than March 31st of the calendar year in which the report is made, and shall submit comments on such report.

(c)(1) Notwithstanding any other provision of this chapter, with respect to the fiscal year commencing October 1, 1984, and each fiscal year thereafter through the fiscal year commencing October 1, 2004, the authorization under § 1-724(a)(1) for each such fiscal year shall be deemed, for purposes of such section, to be reduced in the amount hereafter provided, if the report, submitted by the enrolled actuary pursuant to subsection (a) of this section in the calendar year in which such fiscal year commences, states that the disability retirement rate under subsection (a) of this section for the preceding calendar year is greater than eight tenths of a percentage point. The amount of such reduction shall be $1/2$ per centum for each whole tenth of a percentage point by which the disability retirement rate is greater than eight tenths of a percentage point.

(2) There shall be no reduction pursuant to § 1-724(a)(1) and paragraph (1) of this subsection for any such fiscal year, if, in computing the disability retirement rate under subsection (a) of this section for the calendar year preceding the calendar year in which such fiscal year commences, the numerator is less than 8.

(3)(A) If the Board determines, on the basis of substantial facts, that unordinary circumstances or events of catastrophic magnitude, such as a fire or civil disorder, caused or significantly contributed to the number of disability retirements under § 5-710(a) during a calendar year covered by the report submitted by the enrolled actuary pursuant to subsection (a) of this section, it shall submit a detailed statement on such circumstances and events to the Federal Emergency Management Agency. Such statement shall be submitted on or before July 1st of the calendar year next following the calendar year covered by such report. The statement shall contain, among other matters, data on the total number of disability retirements under §§ 5-709(a) and 5-710(a) for the applicable calendar year, the number of such retirements under § 5-710(a) which, in the opinion of the Board, were caused or significantly contributed to by such circumstances or events, and an explanation as to why the Board considers such events or circumstances to be unordinary and of a catastrophic magnitude.

(B) The Federal Emergency Management Agency shall review the Board's report and provide the Board its assessment within 60 days of receipt of the Board's report, of the scope, nature, involvement, and impact on District of Columbia police officers and firefighters of the events determined by the Board to be of unordinary and of a catastrophic nature. The Agency shall submit copies of its assessment to the Board and the offices and officers set forth in subsection (b) of this section.

(C)(1) The Board, on the basis of such reports from the Federal Emergency Management Agency, shall determine the extent to which such

disability retirements which such Agency determined were caused or contributed to by such events and circumstances caused a reduction in the amount appropriated to the Fund as provided under this subsection. The Board shall report the amount of such reduction so caused to the offices and officers set forth in subsection (b)(1) of this section. Such reports shall be submitted on or before December 31st of the calendar year in which the Board receives such report of the Federal Emergency Management Agency.

(2) In addition to the amount authorized to be appropriated to the Fund for any fiscal year under § 1-724(a)(1), there is authorized to be appropriated for the fiscal year commencing October 1, 1984, and each fiscal year thereafter, such sum as may be necessary to pay to the Fund an amount equal to the amount of any reduction, plus interest lost to the Fund because of the reduction, for a fiscal year as reported to the offices and officers of the Congress pursuant to paragraph (1) of this subsection, but in no case shall any moneys be appropriated on the basis of the authorization pursuant to this paragraph except to the extent that any such reduction was actually made.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 145; Sept. 30, 1983, 97 Stat. 727, Pub. L. 98-104; June 30, 1994, D.C. Law 10-135, § 201(b)(2), 41 DCR 2618; Oct. 29, 1997, 110 Stat. 3841, Pub. L. 104-316, § 129.)

Section references. — This section is referred to in §§ 1-722 and 1-724.

Prior Codifications. — 1981 Ed., § 1-725. 1973 Ed., § 1-1825.

Editor's notes. — Exclusion for certain retirees: Section 133(a) of Pub. L. 102-111, the District of Columbia Appropriations Act, 1992, provided that up to 75 officers or members of the Metropolitan Police Department who were hired before February 14, 1980, and who retire on disability retirement under subsection (a) of this section, for purposes of reducing the autho-

rized Federal payment to the District of Columbia Police Officers' and Fire Fighters' Retirement Fund pursuant to subsection (c) of this section. Mayor authorized to hire actuary: Section 143(b) of Pub. L. 104-194, 110 Stat. 2376, the District of Columbia Appropriations Act, 1997, provided that the Mayor, within 30 days after the enactment of this act, shall engage an enrolled actuary, to be paid by the District of Columbia Retirement Board, and shall comply with the requirements of §§ 1-722(d) and 1-724(d).

Subchapter IV. Reporting and Disclosure Requirements.

§ 1-731. Personal financial disclosure by Board members.

(a)(1) Each member of the Board shall, within 90 days of his selection as a member of the Board and not later than April 30th of each year thereafter, submit to the Mayor, the Council, the Speaker, and the President pro tempore a personal financial disclosure statement with respect to the preceding calendar year. Such statement shall be in such form as the Council may by regulation require and shall contain such information with respect to the member's financial condition as the Council may by regulation require, including the following information:

(A) The amount and source of all income (as defined in § 61 of the Internal Revenue Code of 1954) received during the year;

(B) The identity and category of value of each liability owned, directly or indirectly, that exceeds \$2,500 as of the last day of the year (excluding any

mortgage that secures real property that is the principal residence of such member);

(C) The identity and category of value of any property held, directly or indirectly, in a trade or business or for investment or the production of income that has a fair market value of not less than \$1,000 as of the last day of the year;

(D) The identity and category of value of any transaction, whether direct or indirect, in securities or commodities futures during the year in excess of \$1,000 (excluding any gift to any tax-exempt organization described in § 501(c)(3) of the Internal Revenue Code of 1954), and the identity, date, and category of value of any purchase or sale, whether direct or indirect, of any interest in real or tangible personal property during the year the value of which exceeds \$1,000 at the time of such purchase or sale (excluding any purchase or sale of any property that is the principal residence of such member or that is used as furnishings for such principal residence);

(E) The nature and extent of any interest during the year in any bank, insurance company, or other financial institution, or in any brokerage or other securities or investment company; and

(F) The nature and extent of any employment during the year by any bank, insurance company, or other financial institution, or by any brokerage or other securities or investment company.

(2) A member shall not be required to submit a personal financial disclosure statement to the Speaker and the President pro tempore for calendar years after calendar year 2004.

(b) For purposes of subparagraphs (B), (C), and (D) of paragraph (1) of subsection (a) of this section, the member reporting need not specify the actual amount of value of each item required to be reported under such subparagraphs, but shall indicate which of the following categories such amount or value is within:

- (1) Not more than \$5,000;
- (2) Greater than \$5,000 but not more than \$15,000;
- (3) Greater than \$15,000 but not more than \$50,000;
- (4) Greater than \$50,000 but not more than \$100,000; or
- (5) Greater than \$100,000.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 161.)

Prior Codifications. — 1981 Ed., § 1-731.
1973 Ed., § 1-1831.

References in text. — The Internal Revenue Code of 1954, referred to in subsection (a)(1)(A) and (D), is Title 26 of the United States Code.

New implementing regulations. — New

implementing regulations: Pursuant to this section, the following new regulations were adopted in 1983: The “District of Columbia Retirement Board First Regulations Adoption Act of 1983” (D.C. Law 5-11, June 22, 1983, 30 DCR 2300).

§ 1-732. Annual report.

(a)(1)(A) The Board shall publish an annual report for each fiscal year (beginning with fiscal year 1980) with respect to each retirement program to which this chapter applies and with respect to the Fund for such retirement

program. Such report shall be filed with the Mayor, the Council, the Speaker, and the President pro tempore in accordance with § 1-734(a) and shall be made available and furnished to participants and beneficiaries in accordance with § 1-734(b).

(B) The annual report shall include the information described in subsections (b), (c), (d), and (e) of this section and, when applicable, subsection (f) of this section, and shall also include:

(i) The financial statement and opinion required by paragraph (3) of this subsection; and

(ii) The actuarial statement and opinion required by paragraph (4) of this subsection.

(2) If some or all of the information needed to enable the Board to comply with the requirements of this chapter is maintained by: (A) An insurance carrier or other organization which provides some or all of the benefits under the retirement program, or holds assets of the Fund for such retirement program in a separate account; (B) a bank or similar institution which holds some or all of the assets of the Fund in a common or collective trust or a separate trust, or custodial account; or (C) the Mayor (or the Police and Firemen's Retirement and Relief Board, established pursuant to § 5-722, in carrying out the Mayor's responsibilities under the Policemen and Firemen's Retirement and Disability Act (§ 5-701 et seq.)); such carrier, organization, bank, or institution, or the Mayor, shall transmit and certify the accuracy of such information to the Board within 120 days after the end of the fiscal year (or such other date as may be prescribed under regulations of the Board).

(3)(A) Except as provided in subparagraph (C) of this paragraph, the Board shall engage an independent qualified public accountant who shall conduct such examination of any financial statements of the Fund, and of other books and records of the Fund or the retirement program as the accountant may deem necessary to enable the accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual report by subsection (b) of this section are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Such examination shall be conducted in accordance with generally accepted auditing standards and shall involve such tests of the books and records of the Fund and the retirement program as are considered necessary by the independent qualified public accountant. The independent qualified public accountant shall also offer his opinion as to whether the separate schedules specified in subsection (b)(2) of this section and the summary material required under § 1-734(b)(2) present fairly, and in all material respects, the information contained therein when considered in conjunction with the financial statements taken as a whole. The opinion by the independent qualified public accountants shall be made a part of the annual report.

(B) In offering his opinion under this section, the accountant may rely on the correctness of any actuarial matter certified to by an enrolled actuary if he so states his reliance.

(C) The opinion required by subparagraph (A) of this paragraph need not be expressed as to any statements required by subsection (b)(2)(G) of this

section prepared by a bank or similar institution or insurance carrier regulated and supervised and subject to periodic examination by a state or federal agency if such statements are certified by the bank, similar institution, or insurance carrier as accurate and are made a part of the annual report.

(4)(A) The Board shall engage an enrolled actuary who shall be responsible for the preparation of the materials comprising the actuarial statement required under subsection (d) of this section.

(B) The enrolled actuary shall utilize such assumptions and techniques as are necessary to enable him to form an opinion as to whether the contents of the matters reported under subsection (d) of this section: (i) Are in the aggregate reasonably related to the experience of the Fund and the retirement program and to reasonable expectations; and (ii) represent his best estimate of anticipated experience under the Fund and the retirement program. The opinion by the enrolled actuary shall be made with respect to, and shall be made a part of, each annual report.

(C) In making a certification under this section, the enrolled actuary may rely on the correctness of any accounting matter under subsection (b) of this section as to which any qualified public accountant has expressed an opinion if he so states his reliance.

(b)(1) An annual report under this section shall include a financial statement containing a statement of assets and liabilities, and a statement of changes in net assets available for benefits under the retirement program, which shall include details of revenues and expenses and other changes aggregated by general source and application. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: A description of the retirement program, including any significant changes in the retirement program made during the period and the impact of such changes on benefits; the funding policy (including the policy with respect to prior service cost), and any changes in such policy during the year; a description of any significant changes in benefits made during the period; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; and any other matters necessary to fully and fairly present the financial statements of the Fund.

(2) The statement required under paragraph (1) of this subsection shall have attached the following information in separate schedules;

(A) A statement of the assets and liabilities of the Fund, aggregated by categories and valued at their current value, and the same data displayed in comparative form for the end of the previous fiscal year;

(B) A statement of receipts in and disbursements from the Fund during the preceding 12-month period, aggregated by general source and application;

(C) A schedule of all assets held for investment purposes, aggregated and identified by issuer, borrower, or lessor, or similar party to the transaction (including a notation as to whether such party is known to be a party in interest), maturity date, rate of interest, collateral, par or maturity value, cost, and current value;

(D) A schedule of each transaction involving a person known to be a party in interest, the identity of such party in interest and his relationship or

that of any other party in interest to the Fund, a description of each asset to which the transaction relates; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain or loss on each transaction;

(E) A schedule of all loans or fixed income obligations which were in default as of the close of the fiscal year or were classified during the year as uncollectable and the following information with respect to each loan on such schedule (including a notation as to whether parties involved are known to be parties in interest): The original principal amount of the loan; the amount of principal and interest received during the reporting year; the unpaid balance; the identity and address of the obligor; a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms); the amount of principal and interest overdue (if any) and an explanation thereof;

(F) A list of all leases which were in default or were classified during the year as uncollectable and the following information with respect to each lease on such list (including a notation as to whether parties involved are known to be parties in interest): The type of property leased (and, in the case of fixed assets such as land, buildings, and leaseholds, the location of the property); the identity of the lessor or lessee from or to whom the Fund is leasing; the relationship of such lessors and lessees, if any, to the Fund, the government of the District of Columbia, any employee organization, or any other party in interest; the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; the date the leased property was purchased and its cost; the date the property was leased and its approximate value at such date; the gross rental receipts during the reporting period; expenses paid for the leased property during the reporting period; the net receipts from the lease; the amounts in arrears; and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

(G) The most recent annual statement of assets and liabilities of any common or collective trust maintained by a bank or similar institution in which some or all the assets of the Fund are held, of any separate account maintained by an insurance carrier in which some or all of the assets of the Fund are held, and of any separate trust maintained by a bank as trustee in which some or all of the assets of the Fund are held, and in the case of a separate account or a separate trust, such other information as may be required by the Board in order to comply with this subsection; and

(H) A schedule of each reportable transaction, the name of each party to the transaction (except that, in the case of an acquisition or sale of a security on the market, the report need not identify the person from whom the security was acquired or to whom it was sold) and a description of each asset to which the transaction applies; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain or loss on each transaction.

(3) For purposes of subparagraph (H) of paragraph (2) of this subsection, the term "reportable transaction" means a transaction to which the Fund is a party and which is:

(A) A transaction involving an amount in excess of 3 percent of the current value of the assets of the Fund;

(B) Any transaction (other than a transaction respecting a security) which is part of a series of transactions with or in conjunction with a person in a fiscal year, if the aggregate amount of such transactions exceeds 3 percent of the current value of the assets of the Fund;

(C) A transaction which is part of a series of transactions respecting 1 or more securities of the same issuer, if the aggregate amount of such transactions in the fiscal year exceeds 3 percent of the current value of the assets of the Fund; or

(D) A transaction with or in conjunction with a person respecting a security, if any other transaction with or in conjunction with such person in the fiscal year respecting a security is required to be reported by reason of subparagraph (A) of this paragraph.

(c) The Board shall furnish as a part of an annual report under this section the following information:

(1) The number of individuals covered by the retirement program;

(2) The name and address of each member of the Board;

(3) Except in the case of a person whose compensation is minimal (as determined under regulations of the Council, which regulations the Council shall initially promulgate within 90 days after the date of the enactment of this chapter and who performs solely ministerial duties as determined under such regulations), the name of each person (including any consultant, broker, trustee, accountant, insurance carrier, actuary, administrator, investment counsel, or custodian who rendered services to the Board or who had transactions with the Board) who directly or indirectly received compensation from the Board during the preceding year for services rendered to the Board or the participants or beneficiaries of the retirement program for which a Fund was established, the amount of such compensation, the nature of his services, his relationship, if any, to the District of Columbia government or any employee organization, and any other officer, position or employment he holds with any party in interest;

(4) An explanation of the reason for any change in appointment of any accountant, insurance carrier, enrolled actuary, or investment counsel appointed by the Board; and

(5) Such other financial and actuarial information as the Council may by regulation prescribe.

(d)(1) An annual report under this section for a fiscal year shall include a complete actuarial statement applicable to the fiscal year which shall include the following information:

(A) The date of the actuarial valuation applicable to the fiscal year for which the report is filed;

(B) The date and amount of the payments to the Fund for the fiscal year for which the report is filed and contributions for prior fiscal years not

previously reported, including payments by the participants, the United States, and the District of Columbia;

(C) The following information applicable to the fiscal year for which the report is filed:

- (i) The amounts determined under § 1-722(a)(1);
- (ii) The accrued liabilities;
- (iii) An identification of benefits not included in the calculation;
- (iv) A statement of the other facts and actuarial assumptions and methods used to determine costs; and
- (v) A justification for any change in actuarial assumptions or cost methods;

(D) The number of participants and beneficiaries covered by the retirement program;

(E) A certification of the amount of the payments to the Fund necessary to reduce the accumulated funding deficiency to zero;

(F) A statement by the enrolled actuary of any change in actuarial assumptions made with respect to the Fund during the year;

(G) A statement by the enrolled actuary of the estimated current value of vested benefits under the retirement program;

(H) A statement by the enrolled actuary that to the best of his knowledge the report is complete and accurate;

(I) A copy of the opinion required by subsection (a)(4) of this section;

(J) Such other information regarding the retirement program as the Council may by regulation require; and

(K) Such other information as the enrolled actuary may determine is necessary to fully and fairly disclose the actuarial position of the Fund.

(2) The actuary shall make an actuarial valuation of the Fund for every 3rd fiscal year, unless he determines that a more frequent valuation is necessary to support his opinion under subsection (a)(4) of this section.

(e) A report under this section for a fiscal year shall include a statement prepared by the Board of:

(1) The relative riskiness of the investments during the fiscal year of the assets of the Fund;

(2) A comparison of the average return on the investments of the Fund during the year with the average return on the investments of other public pension funds during the year that have comparable asset valuation; and

(3) The average daily balance of, and the average rate earned by, assets of the Fund in each of any time or demand deposits during the year.

(f)(1) If some or all of the benefits under the retirement program are purchased from and guaranteed by an insurance company, insurance service, or other similar organization, a report under this section shall include a statement from such insurance company, service, or other similar organization covering the fiscal year and enumerating:

(A) The premium rate or subscription charge and the total premium or subscription charges paid to each such carrier, insurance service, or other similar organization and the approximate number of persons covered by each class of such benefits; and

(B) The total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such company, service, or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs paid by such company, service, or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose.

(2) If any such company, service, or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include, in lieu of the information required by subparagraph (B) of paragraph (1) of this subsection, a statement as the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the Fund, and a copy of the financial report of the company, service, or other organization and, if such company, service, or organization incurs specific costs in connection with the acquisition or retention of any particular Fund or Funds, a detailed statement of such costs.

(Nov. 17, 1979, 93 Stat. 885, Pub. L. 96-122, § 162; June 30, 1994, D.C. Law 10-135, § 201(b)(3), 41 DCR 2618.)

Cross references. — Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan, annual audit, see § 1-903.06.

Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan, calculation of payments to the Police Officers and Fire Fighters' Retirement Fund, the Teachers' Retirement Fund, and the Judges' Retirement Fund, see § 1-907.03.

Section references. — This section is referred to in §§ 1-711, 1-722, and 1-734.

Prior Codifications. — 1981 Ed., § 1-732. 1973 Ed., § 1-1832.

Editor's notes. — Transmittal required by Board: Public Law 104-194, 110 Stat. 2363, the

District of Columbia Appropriations Act, 1997, provided that the District of Columbia Retirement Board shall provide to the Congress and to the Council of the District of Columbia a quarterly report of the allocations of charges by fund and of expenditures of all funds: Provided further, That the District of Columbia Retirement Board shall provide the Mayor, for transmittal to the Council of the District of Columbia, an item accounting of the planned use of appropriated funds in time for each annual budget submission and the actual use of such funds in time for each annual audited financial report.

§ 1-733. Retirement program summary description.

(a)(1) A summary description of each retirement program to which this chapter applies shall be furnished to participants and beneficiaries as provided in § 1-734(b). The summary description shall include the information specified in subsection (b) of this section, shall be written in a manner calculated to be understood by the average participant or beneficiary, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the retirement program.

(2) A summary of any material modification in the terms of the retirement program and any change in the information required under subsection (b) of this section, written in a manner calculated to be understood by the average participant or beneficiary, shall be furnished in accordance with § 1-734(b)(1).

(b) Each summary description of a retirement program shall contain the following information:

- (1) The name and type of administration of the retirement program;
- (2) The name and address of the Chairman of the Board, who shall be the agent of the Board for the service of legal process;
- (3) The name, title, and address of each member of the Board;
- (4) A description of the relevant provisions of applicable collective-bargaining agreements;
- (5) The retirement program's requirements respecting eligibility for participation and benefits;
- (6) A description of the provisions providing for nonforfeitable pension benefits;
- (7) Circumstances which may result in disqualification, ineligibility, or denial or loss of benefits;
- (8) The identity of any organization through which benefits are provided;
- (9) The procedures to be followed in presenting claims for benefits under the retirement program; and
- (10) The remedies available under the retirement program for the redress of claims that are denied in whole or in part.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 163.)

Section references. — This section is referred to in § 1-734.

Prior Codifications. — 1981 Ed., § 1-733.
1973 Ed., § 1-1833.

§ 1-734. Filing reports and furnishing information to participants.

(a)(1) The Board shall file with the Mayor, the Council, the Speaker, and the President pro tempore: (A) the annual reports for a fiscal year within 210 days after the end of such year; (B) a copy of each summary description of a retirement program within 1 year after the date of the enactment of this chapter; and (C) a revised summary description of a retirement program, incorporating any material modification in the terms of the retirement program, within 60 days after such modification is adopted or occurs. The Mayor shall make copies of such retirement program descriptions and annual reports available for public inspection in an appropriate location. The Board shall also furnish to the Mayor, the Council, the Speaker, and the President pro tempore, upon request, any documents relating to the retirement program or the Fund, including any bargaining agreement, trust agreement, contract, or other instrument under which the retirement program or Fund is operated.

(2)(A) The Mayor or the Council may reject any filing under this section within 30 days of such filing:

(i) Upon determining that such filing is incomplete for purposes of this chapter; or

(ii) Upon determining that there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to § 1-732(a)(3)(A) or § 1-732(a)(4)(B).

(B) If the Mayor or the Council rejects a filing of a report under

subparagraph (A) of this paragraph, and if a revised filing satisfactory to the Mayor or the Council is not submitted within 45 days after the determination under subparagraph (A) of this paragraph to reject the filing is made, and if the Mayor or the Council considers it in the best interest of the participants, then the Mayor or the Council may take any 1 or more of the following actions: (i) Retain an independent qualified public accountant on behalf of the participants to perform an audit; (ii) retain an enrolled actuary on behalf of the participants to prepare an actuarial statement; or (iii) bring a civil action for such legal or equitable relief as may be appropriate to enforce the provisions of this chapter. The Board shall permit any accountant or actuary so retained to inspect whatever books and records of the Fund are necessary for such audit.

(3)(A) The Congress may reject any filing under this section within 30 days of such filing by enacting into law a joint resolution stating that the Congress has determined:

- (i) That such filing is incomplete for purposes of this subchapter; or
- (ii) That there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to § 1-732(a)(3)(A) or § 1-732(a)(4)(B).

(B) If the Congress rejects a filing under subparagraph (A) of this paragraph and if either a revised filing is not submitted within 45 days after the enactment under subparagraph (A) of this paragraph rejecting the initial filing or such revised filing is rejected by the Congress by enactment into law of a joint resolution within 30 days after submission of the revised filing, then the Congress may, if it deems it is in the best interests of the participants, take any 1 or more of the following actions:

(i) Retain an independent qualified public accountant on behalf of the participants to perform an audit; or

(ii) Retain an enrolled actuary on behalf of the participants to prepare an actuarial statement.

The Board and the Mayor shall permit any accountant or actuary so retained to inspect whatever books and records of the Fund and the retirement program are necessary for performing such audit or preparing such statement.

(C) If a revised filing is rejected under subparagraph (B) of this paragraph or if a filing required under this chapter is not made by the date specified, no funds appropriated for the Fund with respect to which such filing was required as part of the federal payment may be paid to the Fund until such time as an acceptable filing is made. For purposes of this subparagraph, a filing is unacceptable if, within 30 days of its submission, the Congress enacts into law a joint resolution disapproving such filing.

(b) Publication of the summary retirement program descriptions and annual reports shall be made to participants and beneficiaries as follows:

(1) The Board shall furnish to each participant, and to each beneficiary receiving benefits under the retirement program, a copy of the summary retirement program description and all modifications and changes referred to in § 1-733(a) within 90 days after he becomes a participant or in the case of a beneficiary, within 90 days after he first receives benefits. The Board shall furnish to each participant, and to each beneficiary receiving benefits under

the retirement program, every 5th year an updated summary retirement program description described in § 1-733 which integrates all retirement program amendments made within such 5-year period, except that in a case where no amendments have been made to a retirement program during such 5-year period this sentence shall not apply. Notwithstanding the foregoing sentence, the Board shall furnish to each participant, and to each beneficiary receiving benefits under the retirement program, the summary retirement program description described in § 1-733 every 10th year. If there is a modification or change described in § 1-733(a) a summary description of such modification or change shall be furnished to each participant and to each beneficiary who is receiving benefits under the retirement program not later than 210 days after the end of the fiscal year in which the change is adopted.

(2) The Board shall make copies of the latest annual report and of any bargaining agreement, trust agreement, contract, or other instruments under which the retirement program or the Fund is operated available for examination by any participant or beneficiary in the principal office of the Board and in such other places as may be necessary to make available all pertinent information to all participants (including such places as the Council may by regulation prescribe).

(3) Within 210 days after the close of the fiscal year, the Board shall furnish to each participant, and to each beneficiary receiving benefits under the retirement program, a copy of the statements and schedules described in subparagraphs (A) and (B) of § 1-732(b)(2) for such fiscal year and such other material as is necessary to fairly summarize the latest annual report.

(4) The Board shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary retirement program description, the latest annual report, and any bargaining agreement, trust agreement, contract, or other instruments under which the retirement program or Fund is operated. The Board may make a reasonable charge to cover the cost of furnishing such copies. The Council may by regulation prescribe the maximum amount that will constitute a reasonable charge under the preceding sentence.

(c) The Council may by regulation require that the Board furnish to each participant and to each beneficiary receiving benefits under a retirement program a statement of the rights of participants and beneficiaries under this chapter.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 164; Oct. 12, 1984, 98 Stat. 1975, Pub. L. 98-473, § 131(m).)

Section references. — This section is referred to in §§ 1-732 and 1-733.

Prior Codifications. — 1981 Ed., § 1-734.
1973 Ed., § 1-1834.

§ 1-735. Reporting of participants' benefit rights.

(a) The Board shall furnish to any participant or beneficiary who so requests in writing a statement indicating, on the basis of the latest available information:

- (1) The total benefits accrued; and

(2) The nonforfeitable retirement benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

(b) A participant or beneficiary is not entitled to receive more than 1 report under subsection (a) of this section during any 12-month period.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 165.)

Section references. — This section is referred to in §§ 1-736 and 1-739.

Prior Codifications. — 1981 Ed., § 1-735. 1973 Ed., § 1-1835.

§ 1-736. Public information.

(a) Except as provided in subsection (b) of this section, the contents of the descriptions, annual reports, statements, and other documents filed with the Mayor, the Council, the Speaker, and the President pro tempore pursuant to this subchapter shall be public information, and the Mayor, the Council, the Speaker, and the President pro tempore shall each make such documents available for inspection in an appropriate location. The Mayor, the Council, the Speaker, and the President pro tempore may use the information and data in such documents for statistical and research purposes and may compile and publish such studies, analyses, reports, and surveys based thereon as may be considered appropriate.

(b) Information described in § 1-735(a) with respect to a participant or beneficiary of a retirement program may be disclosed only to the extent that information respecting that participant's or beneficiary's benefits under Title II of the Social Security Act may be disclosed under such Act.

(c) Except to the extent that information which is protected from public disclosure under subsection (b) of this section, or which relates to personnel matters the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, is involved, all meetings of the Board shall be open to the public.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 166.)

Section references. — This section is referred to in § 1-737.

References in text. — "Title II of the Social Security Act," referred to in (b), is 42 U.S.C. § 401 et seq.

Prior Codifications. — 1981 Ed., § 1-736. 1973 Ed., § 1-1836.

§ 1-737. Retention of records.

The Board shall maintain records on the matters required to be disclosed by this chapter which will provide in sufficient detail the necessary basic information and data from which the required documents may be verified, explained, or clarified, and checked for accuracy and completeness, shall include vouchers, worksheets, receipts, and applicable resolutions in such records, and shall keep such records available for examination for a period of not less than 6 years after the filing date of the documents based on the information which they contain. Except to the extent that information is

involved which is protected from public disclosure under § 1-736(b), all such records shall be available for inspection by the public.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 167.)

Prior Codifications. — 1981 Ed., § 1-737. 1973 Ed., § 1-1837.

§ 1-738. Additional information.

(a) In addition to the information specifically required to be furnished by this subchapter, the Board shall furnish promptly such additional information as the Mayor, the Council, the Speaker, or the President pro tempore may request.

(b) The Board shall, at regular intervals to be determined by the Board, compile and publish all regulations then in effect which were issued by the Board or the Council under this chapter.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 168.)

Section references. — This section is referred to in § 1-739.

Prior Codifications. — 1981 Ed., § 1-738. 1973 Ed., § 1-1838.

§ 1-739. Criminal penalties.

Whoever willfully violates any provision of this subchapter (other than §§ 1-735 and 1-738), or any regulation or order issued under any such provision, shall be fined not more than \$5,000, or imprisoned not more than 1 year, or both, except that in the case of such a violation by a person not an individual, such person shall be fined not more than \$100,000.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 169.)

Prior Codifications. — 1981 Ed., § 1-739. 1973 Ed., § 1-1839.

Subchapter V. Fiduciary Responsibility; Civil Sanctions.

§ 1-741. Fiduciary responsibilities.

(a)(1) The Board, each member of the Board, and each person defined in § 1-702(20) shall discharge responsibilities with respect to a Fund as a fiduciary with respect to the Fund. The Board may designate one or more other persons who exercise responsibilities with respect to a Fund to exercise such responsibilities as a fiduciary with respect to such Fund. The Board shall retain such fiduciary responsibility for the exercise of careful, skillful, prudent, and diligent oversight of any person so designated as would be exercised by a prudent individual acting in a like capacity and familiar with such matters under like circumstances.

(2) A fiduciary shall discharge his duties with respect to a Fund solely in the interest of the participants and beneficiaries and:

(A) For the exclusive purpose of providing benefits to participants and their beneficiaries;

(B) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) By diversifying the investments of the Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) In accordance with the provisions of law, documents, and instruments governing the retirement program to the extent that such documents and instruments are consistent with the provisions of this chapter.

(b) In addition to any liability which he may have under any other provision of this subchapter, a fiduciary with respect to a Fund shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same Fund:

(1) If he knowingly participates in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach of fiduciary responsibility;

(2) If, by his failure to comply with subsection (a)(2) of this section in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach of fiduciary responsibility; or

(3) If he has knowledge of a breach of fiduciary responsibility by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

(c) Except as provided in subsections (f), (g), and (h) of this section, a fiduciary with respect to a Fund shall not cause the Fund to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect:

(1) Sale or exchange, or leasing, of any property between the Fund and a party in interest;

(2) Lending of money or other extension of credit between the Fund and a party in interest;

(3) Furnishing of goods, services, or facilities between the Fund and a party in interest; or

(4) Transfer to, or use by or for the benefit of, a party in interest, of any assets of the Fund.

(d) Except as provided in subsection (h) of this section, a fiduciary with respect to a Fund shall not:

(1) Deal with the assets of the Fund in his own interest or for his own account;

(2) In his individual or in any other capacity act in any transaction involving the Fund on behalf of a party (or represent a party) whose interests are adverse to the interests of the Fund or the interests of its participants or beneficiaries; or

(3) Receive any consideration for his own personal account from any party dealing with such Fund in connection with a transaction involving the assets of the Fund.

(e) A transfer of real or personal property by a party in interest to a Fund shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the Fund assumes or if it is subject to a mortgage or similar lien which a party in interest placed on the property within the 10-year period ending on the date of the transfer.

(f) The prohibitions provided in subsection (c) of this section shall not apply to any of the following transactions:

(1) Contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the Fund, if no more than reasonable compensation is paid therefor;

(2) The investment of all or part of a Fund's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a state, if such bank or other institution is a fiduciary of such Fund and if such investment is expressly authorized by regulations of the Board or by a fiduciary (other than such bank or institution or affiliate thereof) who is expressly empowered by the Board to make such investment;

(3) The providing of any ancillary service by a bank or similar financial institution supervised by the United States or a state if such bank or other institution is a fiduciary of such Fund and if:

(A) Such bank or similar financial institution has adopted adequate internal safeguards which assure that the providing of such ancillary service is consistent with sound banking and financial practice, as determined by federal or state supervisory authority; and

(B) The extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Mayor after consultation with federal and state supervisory authority), and adherence to such guidelines would reasonably preclude such bank or similar financial institution from providing such ancillary service (i) in an excessive or unreasonable manner, and (ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of the retirement program. Such ancillary services shall not be provided at more than reasonable compensation;

(4) The exercise of a privilege to convert securities, to the extent provided in regulations of the Council, but only if the Fund receives no less than adequate consideration pursuant to such conversion; or

(5) Any transaction between a Fund and a common or collective trust fund or pooled investment fund maintained by a party in interest which is a bank or trust company supervised by a state or federal agency, or a pooled investment fund of an insurance company qualified to do business in a state, if:

(A) The transaction is a sale or purchase of an interest in the fund;

(B) The bank, trust company, or insurance company receives not more than reasonable compensation; and

(C) Such transaction is expressly permitted by the Board, or by a fiduciary (other than the bank, trust company, insurance company, or an affiliate thereof) who has authority to manage and control the assets of the Fund.

(g) Nothing in subsection (c) of this section shall be construed to prohibit any fiduciary from:

(1) Receiving any benefit to which he may be entitled as a participant or beneficiary in the retirement program, so long as the benefit is computed and paid on a basis which is consistent with the terms of the retirement program as applied to all other participants and beneficiaries;

(2) Receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with respect to the Fund; or

(3) Serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(h) The Board may from time to time avail itself to exemptive relief from all or part of the restrictions imposed by subsections (c) and (d) of this section for administrative exemptions which have been previously granted by the United States Department of Labor. Prior to utilizing exempted transactions, the Board shall hold a public hearing on the proposed exemption. Notice of the time, place, and subject matter of the public hearing shall be published in the D.C. Register at least 15 days in advance of its scheduled date in order to afford interested persons an opportunity to present their views. The proposed exemption shall be published in the D.C. Register and submitted to the Council along with a synopsis of the results of the public hearing, and written findings by the Board that the exemptions are:

(1) Administratively feasible;

(2) In the best interests of the funds and of their participants and beneficiaries; and

(3) Protective of the rights of participants and beneficiaries of these funds.

(h-1) Unless the Council disapproves the proposed exemption submitted under subsection (h) of this section by resolution within 30 days of receipt by the Council, the exemption shall be deemed approved. If a resolution of disapproval has been introduced by at least one member of the Council within the 5-day period (excluding Saturdays, Sundays, and holidays) following its receipt, the period of Council review shall be extended by an additional 15 days (excluding Saturdays, Sundays, and holidays) from the date of its receipt. If the resolution of disapproval has not been approved within the 15-day extended period, the proposed exemption shall be deemed approved.

(i) For purposes of subsections (c) and (d) of this section, the assets of a Fund shall not include assets in a pooled separate account of an insurance company qualified to do business in a state or assets in a collective investment fund of a bank or similar financial institution supervised by the United States or any state, provided that:

(1) The interest of all Funds in the separate account or collective investment fund does not exceed 5% of the total of all assets in the account or fund; and

(2) At the time a transaction that would otherwise be prohibited by subsection (c) or (d) of this section is entered into, and at the time of any subsequent renewal which requires the approval of the bank or insurance company, the terms of the transaction are not less favorable to the pooled

separate account or collective investment fund than the terms generally available in an arm's length transaction between unrelated parties.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 181; Feb. 24, 1987, D.C. Law 6-163, § 2, 33 DCR 6698; Mar. 24, 1990, D.C. Law 8-97, § 2(e), 37 DCR 1046; Sept. 10, 1992, D.C. Law 9-145, § 401(c), 39 DCR 4895; Oct. 29, 1993, 107 Stat. 1349, Pub. L. 103-127, 139(a); Apr. 8, 2005, D.C. Law 15-300, § 2(d), 52 DCR 1504.)

Prior Codifications. — 1981 Ed., § 1-741. 1973 Ed., § 1-1841.

Effect of amendments. — D.C. Law 15-300 rewrote subsec. (h) and added subsec. (h-1).

Legislative history of Law 6-160. — Law 6-160 was introduced in Council and assigned Bill No. 6-488. The Bill was adopted on first and second readings on June 24, 1986 and July 8, 1986, respectively. Signed by the Mayor on July 16, 1986, it was assigned Act No. 6-205 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-163. — Law 6-163 was introduced in Council and assigned Bill No. 6-417, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 8, 1986 and September 23, 1986, respectively. Signed by the Mayor on October 9, 1986, it was assigned Act No. 6-209 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-97. — For legislative history of D.C. Law 8-97, see Historical and Statutory Notes following § 1-702.

Legislative history of Law 9-134. — For legislative history of D.C. Law 9-134, see Historical and Statutory Notes following § 1-711.

Legislative history of Law 9-145. — For legislative history of D.C. Law 9-145, see Historical and Statutory Notes following § 1-711.

Legislative history of Law 15-300. — For Law 15-300, see notes following § 1-702.

Resolutions. — Resolution 15-288, the "District of Columbia Retirement Board Restricted Transaction Exemption Approval Resolution of 2003", was approved effective November 4, 2003.

Editor's notes. — Repeal of Title IV of D.C. Law 9-145: Section 139(a) of Pub. L. 103-127, 107 Stat. 1349, provided that Title IV of the District of Columbia Omnibus Budget Support Act of 1992 (D.C. Law 9-145) is hereby repealed, and any provision of the District of Columbia Retirement Reform Act amended by such title is restored as if such title had not been enacted into law.

Section 139(b) of Pub. L. 103-127 provided that subsection (a) of that section shall apply beginning September 10, 1992.

Approval of rules to establish administrative class exemptions: Pursuant to Resolution 8-293, the "District of Columbia Retirement Board Administrative Class Exemptions Approval Resolution of 1990", effective November 30, 1990, the Council approved the proposed rules to establish administrative class exemptions from prohibited transactions in order to permit the District of Columbia Retirement Board to participate in certain commercially reasonable and noncontroversial financial transactions.

Independent audit of Retirement Board: Section 135 of Public Law 103-334, 108 Stat. 2586, the District of Columbia Appropriations Act, 1995, provided that the District of Columbia Retirement Board shall enter into an agreement with an independent firm meeting certain qualifications to prepare and submit to the Retirement Board a written set of findings and recommendations not later than 6 months after the date of enactment of this Act regarding the appropriateness and adequacy of the Retirement Board's fiduciary, management, and investment practices and procedures, and provided for expenditure of funds.

CASE NOTES

ANALYSIS

Authority of court.
 Authority of Board of elections.
 Construction and application.
 Private right of action.

Authority of court.

Authority of Board of elections.

Construction and application.

Administrator of employee deferred compensation plan did not violate statutes governing the duties of fiduciaries of defined contribution plans and District of Columbia retirement funds, when laptop containing confidential personal information was stolen from home of administrator's employee, as the deferred compensation plan was not a defined contribution plan or a retirement fund. *Randolph v. ING Life*

Ins. & Annuity Co., 973 A.2d 702, 2009 D.C. App. LEXIS 231 (2009).

Private right of action.

Even if statute governing duties of fiduciaries of District of Columbia retirement funds applied to deferred compensation plan, such statute did not establish a private right to sue for damages for conduct creating a risk of identity

theft, for purposes of action that participants in employee deferred compensation plan brought against plan administrator after laptop computer containing confidential personal information was stolen from home of employee of plan administrator. *Randolph v. ING Life Ins. & Annuity Co.*, 973 A.2d 702, 2009 D.C. App. LEXIS 231 (2009).

§ 1-742. Liability for breach of fiduciary duty.

(a) Any person who is a fiduciary with respect to a Fund who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this chapter shall be personally liable to make good to such Fund any losses to the Fund resulting from each such breach and to restore to such Fund any profits of such fiduciary which have been made through the use of assets of the Fund by the fiduciary and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

(b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this chapter if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 182.)

Cross references. — Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan, civil enforcement, persons eligible to bring action, see § 1-911.01.

Section references. — This section is referred to in § 1-747.

Prior Codifications. — 1981 Ed., § 1-742. 1973 Ed., § 1-1842.

§ 1-743. Exculpatory provisions; insurance.

(a) Any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this subchapter shall be void as against public policy.

(b) Nothing in this section shall preclude:

(1) The Board from purchasing insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary;

(2) A fiduciary from purchasing insurance to cover liability under this subchapter from and for his own account; or

(3) An employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to the Fund from which the annuities and other retirement and disability benefits of the members of such employee organization are paid.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 183.)

Prior Codifications. — 1981 Ed., § 1-743.

1973 Ed., § 1-1843.

§ 1-744. Prohibition against certain persons holding certain positions.

(a) No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of federal or state law involving substances defined in § 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. § 802(6)), murder, rape, kidnapping, perjury, assault with intent to kill, any crime described in § 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. § 80a-9(a)(1)), a violation of any provision of this chapter, a violation of § 302 of the Labor-Management Relations Act, 1947 (29 U.S.C. § 186), a violation of Chapter 63 of Title 18, United States Code, a violation of § 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of Title 18, United States Code, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. § 401), or conspiracy to commit any such crime or attempt to commit any such crime, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve: (1) As a fiduciary, investment counsel, agent, or employee of any Fund established by this chapter; or (2) as a consultant to any Fund established by this chapter; during or for 5 years after such conviction or after the end of such imprisonment, whichever is the later, unless prior to the end of such 5-year period, in the case of a person so convicted or imprisoned, his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in clause (1) or (2) of this subsection would not be contrary to the purposes of this chapter. Prior to making any such determination the Board of Parole shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the state, county, and federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board of Parole's determination in any such proceeding shall be final. No person shall knowingly permit any other person to serve in any capacity referred to in clause (1) or (2) of this subsection in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee, of any Fund established by this chapter, or as a consultant to any Fund established by this chapter, without a notice, hearing, and determination by such Board of Parole that such service would be inconsistent with the intention of this section.

(b) Whoever willfully violates this section shall be fined not more than \$10,000, or imprisoned for not more than 1 year, or both.

(c) For the purposes of this section:

(1) A person shall be deemed to have been "convicted" and to be under the disability of "conviction" from the date of entry of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event.

(2) The term "consultant" means any person who, for compensation,

advises or represents a Fund or who provides other assistance to such Fund concerning the operation of such Fund.

(3) A period of parole shall not be considered as part of a period of imprisonment.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 184.)

Section references. — This section is referred to in § 1-711.

Prior Codifications. — 1981 Ed., § 1-744.
1973 Ed., § 1-1844.

§ 1-745. Bonding.

(a)(1)(A) Each fiduciary of a Fund established by this chapter and each person who handles funds or other property of such a Fund (hereinafter in this section referred to as “Fund official”) shall be bonded as provided in this section, except that no bond shall be required of a fiduciary (or of any director, officer, or employee of such fiduciary) if such fiduciary:

(i) Is a corporation organized and doing business under the laws of the United States or of any state;

(ii) Is authorized under such laws to exercise trust powers or to conduct an insurance business;

(iii) Is subject to supervision or examination by federal or state authority; and

(iv) Has at all times a combined capital and surplus in excess of such a minimum amount as may be established by regulations issued by the Council, which amount shall be at least \$1,000,000.

(B) Sub-subparagraph (iv) of subparagraph (A) of this paragraph shall apply to a bank or other financial institution which is authorized to exercise trust powers and the deposits of which are not insured by the Federal Deposit Insurance Corporation only if such bank or institution meets bonding or similar requirements under state law which the Council determines are at least equivalent to those imposed on banks by federal law.

(2)(A) The amount of such bond shall be the lesser of 10 percent of the amount of the funds handled by such fiduciary and \$500,000, except that the amount of such bond shall be at least \$1,000.

(B) The Mayor, after notice and opportunity for hearing to such fiduciary and all other parties in interest to such Fund, may waive the \$500,000 limit.

(C) The amount of such bond shall be set at the beginning of each fiscal year.

(3) For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by the predecessor or predecessors, if any, during the preceding reporting year, or if the Fund has no preceding reporting year under this chapter, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations to be prescribed by the Council.

(4) Such bond shall provide protection to the Fund against loss by reason

of acts of fraud or dishonesty on the part of the Fund official, directly or through connivance with others.

(5) Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on federal bonds under authority granted by the Secretary of the Treasury pursuant to §§ 6 through 13 of Title 6, United States Code [repealed]. Any bond shall be in a form or of a type approved by the Council, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(b) It shall be unlawful for any Fund official to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any Fund without being bonded as required by subsection (a) of this section, and it shall be unlawful for any Fund official or any other person having authority to direct the performance of such functions to permit such functions, or any of them, to be performed by any Fund official with respect to whom the requirements of subsection (a) of this section have not been met.

(c) It shall be unlawful for any person to procure any bond required by subsection (a) of this section from any surety or other company or through any agent or broker in whose business operations the Fund or any party in interest in the Fund has any control or significant financial interest, direct or indirect.

(d) Nothing in any other provision of law shall require any person required to be bonded as provided in subsection (a) of this section because he handles funds or other property of a Fund to be bonded insofar as the handling by such person of the funds or other property of such Fund is concerned.

(e) The Council shall prescribe such regulations as may be necessary to carry out the provisions of this section.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 185.)

Prior Codifications. — 1981 Ed., § 1-745.
1973 Ed., § 1-1845.

subsection (a)(5), were repealed by § 5(b) of the Act of September 13, 1982, Pub. L. 97-258, 96 Stat. 1068.

References in text. — “Sections 6 through 13 of Title 6, United States Code,” referred to in

§ 1-746. Limitation on actions.

No action may be commenced under this chapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this subchapter, or with respect to a violation of this subchapter, after the earlier of: (1) Six years after: (A) The date of the last action which constituted a part of the breach or violation; or (B) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation; or (2) three years after the earliest date: (A) On which the plaintiff had actual knowledge of the breach or violation; or (B) on which a report from which he could reasonably be expected to have obtained knowledge of such breach or violation was filed with the Mayor or the Council under this chapter; except that in the case of fraud or concealment, such an action may be commenced not later than 6 years after the date of discovery of such breach or violation.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 186; Apr. 13, 2005, D.C. Law 15-354, § 3(c), 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 1-746. 1973 Ed., § 1-1846.

Effect of amendments. — D.C. Law 15-354 substituted “or the Council” for “, the Council, the Speaker, or the President pro tempore”.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 1-523.01.

§ 1-747. Civil enforcement.

(a) A civil action may be brought:

(1) By a participant or beneficiary:

(A) For the relief provided for in subsection (b) of this section; or

(B) To recover benefits due to him under the terms of his retirement program, to enforce his rights under the terms of the retirement program, or to clarify his rights to future benefits under the terms of the retirement program;

(2) By a participant or beneficiary, the District of Columbia, or the Board for appropriate relief under § 1-742; or

(3) By a participant or beneficiary, the District of Columbia, and the Board:

(A) To enjoin any act or practice which violates any provision of this chapter or the terms of a retirement program; or

(B) To obtain other appropriate equitable relief:

(i) To redress any such violation; or

(ii) To enforce any provision of this chapter or the terms of a retirement program.

(b) If the Board fails or refuses to comply with a request for any information which the Board is required by this chapter to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the Board) by mailing the information requested to the last known address of the requesting participant or beneficiary within 30 days after such request, then the Board may, in the court’s discretion, be liable to such participant or beneficiary in an amount of up to \$100 a day from the date of such failure or refusal, and the court may order the Board to provide the required information and may in its discretion order such other relief as it considers proper.

(c) The Board may sue and be sued under this chapter as an entity. Service of summons, subpoena, or other legal process of a court upon the Chairman of the Board in his capacity as such shall constitute service upon the Board.

(d) In any action under this chapter by a participant, beneficiary, fiduciary, or the Board, the court in its discretion may allow a reasonable attorney’s fee and costs of action to either party.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 187; Mar. 24, 1990, D.C. Law 8-97, § 2(f), 37 DCR 1046.)

Prior Codifications. — 1981 Ed., § 1-747. 1973 Ed., § 1-1847.

Legislative history of Law 8-97. — For

legislative history of D.C. Law 8-97, see Historical and Statutory Notes following § 1-702.

§ 1-748. Claims procedure.

In accordance with regulations issued by the Board, the Board shall provide to any participant or beneficiary who has a claim for benefits under a retirement program denied:

(1) Adequate written notice of such denial, setting forth the specific reasons for such denial in a manner calculated to be understood by such participant or beneficiary; and

(2) A reasonable opportunity for a full and fair review of the decision denying such claim.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 188; Apr. 13, 2005, D.C. Law 15-354, § 3(d), 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 1-748.
1973 Ed., § 1-1848.

Effect of amendments. — D.C. Law 15-354 substituted “In accordance with regulations issued by the Board, the Board shall” for “In accordance with regulations of the Council, the Mayor shall”.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 1-523.01.

Delegation of Authority. — Delegation of authority under Law 4-123, see Mayor’s Order 83-245, October 14, 1983.

Subchapter VI. Denial of Claim for Retirement Benefits.

§ 1-751. Procedure enumerated.

(a) *Purpose.* — This section sets forth the procedures for the denial of a claim for retirement benefits under the chapter.

(b) *Filing of claim for benefits.* — For the purposes of this section, a claim is a request for a benefit by a participant or beneficiary of any of the Funds. A claim is filed when the procedure established by the Board for the initiation of claims has been met. Until such procedure has been established, a claim shall be deemed filed when a written communication is made by a claimant (or the claimant’s authorized representative) which is reasonably calculated to bring the claim to the attention of the Board and the written communication is received by the Board.

(c) *Written notice of denial.* —

(1) The Board shall provide to every claimant whose claim for benefits is wholly or partially denied a written notice setting forth in a manner calculated to be understood by the claimant:

(A) The specific reason or reasons for the denial;

(B) Specific reference to pertinent provisions of applicable law, regulations, or Fund procedures on which the denial is based;

(C) A description of any material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

(D) Appropriate information as to the steps to be taken if the participant or beneficiary wishes to submit his or her claim for review.

(2) If the claim is wholly or partially denied, written notice of the decision, meeting the requirements of paragraph (1) of this subsection, shall be

furnished to the claimant within a reasonable time after receipt of the claim by the Board.

(3) If written notice of the denial of a claim is not furnished in accordance with paragraph (2) of this subsection within a reasonable time, the claimant shall be deemed to have exhausted his or her administrative remedies for the purpose of instituting proceedings for relief in the Superior Court for the District of Columbia, unless the claimant chooses to avail himself or herself of the procedures set forth in subsection (d) of this section.

(4) For the purposes of paragraphs (2) and (3) of this subsection, a reasonable period of time shall be no more than 90 calendar days after receipt of the claim by the Board, unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 90-calendar-day period. In no event shall such extension exceed a period of 90 calendar days from the end of such initial period. The written notice of extension shall indicate the special circumstances requiring an extension of time and the date by which the Board expects to render the final decision.

(d) *Review.* —

(1) The Board shall establish and maintain a procedure for each Fund, by which a claimant or his or her duly authorized representative has reasonable opportunity to appeal a denied claim to the Board, and under which full and fair review of the claim and its denial may be obtained. Every such procedure shall include, but not be limited to, provisions that permit a claimant or his or her duly authorized representative to:

- (A) Request a review upon written application to the Board;
- (B) Review pertinent documents; and
- (C) Submit issues and comments in writing.

(2) Such procedures may establish a limited period within which a claimant must file any request for review of a denial claim. Such time limits must be reasonable and related to the nature of the benefit which is the subject of the claim and to other attendant circumstances. In no event may such a period expire less than 60 calendar days after receipt by the claimant or written notification of the denial of a claim.

(3) A decision by the Board or his or her designees shall be made no later than 90 calendar days after the Board's receipt of a request for review, unless special circumstances require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than 120 calendar days after receipt of a request for review. If such an extension of time for review is required because of special circumstances, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension.

(4) The decision on review shall be in writing and shall be written in a manner calculated to be understood by the claimant. The written decision shall include specific reasons for the decision and shall cite specific references to the pertinent provisions of applicable law, regulation, or Fund procedures on which the decision is based.

(5) The decision on review shall be furnished to the claimant within the appropriate time prescribed in paragraph (3) of this subsection. If the decision on review is not furnished within such time, the claim shall be deemed denied on review.

(e) *Reasonableness.* — For purposes of this subchapter, a procedure will be deemed to be reasonable only if it does not contain any provision, and is not administered in a way, which unduly inhibits or hampers the initiation or processing of a claim for benefits.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 191, as added July 2, 1982, D.C. Law 4-123, § 2(b), 29 DCR 2084; Mar. 13, 2004, D.C. Law 15-105, § 33(c), 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 3(e), 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 1-751.

Effect of amendments. — D.C. Law 15-105 validated a previously made technical correction.

D.C. Law 15-354, in subsec. (b), substituted “Board” for “Mayor” and “Director of Personnel”; in subsec. (c), substituted “Board” for “Mayor” and, in subsec. (d), substituted “Board” for “Mayor” and “Mayor or his or her designee”.

Legislative history of Law 4-123. — Law 4-123, the “District of Columbia Retirement Regulations Adoption Act of 1982,” was introduced in Council and assigned Bill No. 4-377, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 6, 1982 and April 27, 1982, respectively. Signed by the Mayor on May 11, 1982, it was assigned Act No. 4-188 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-105. — Law 15-105, the “Technical Amendments Act of 2003”, was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 1-523.01.

Delegation of Authority. — Delegation of authority under Law 4-123, see Mayor’s Order 83-245, October 14, 1983.

§ 1-752. Application of procedure.

(a) The procedure established by this subchapter shall apply to any participant or beneficiary who has a claim for benefits denied under the District of Columbia Police Officers and Fire Fighters’ Retirement Fund, established by § 1-712; the District of Columbia Teachers’ Retirement Fund, established by § 1-713; and the District of Columbia Judges’ Retirement Fund, established by § 1-714.

(b) The procedure established by this subchapter shall apply to claims for benefits denied after March 1, 1982.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 192, as added July 2, 1982, D.C. Law 4-123, § 3, 29 DCR 2084; Mar. 13, 2004, D.C. Law 15-105, § 33(d), 51 DCR 881.)

Prior Codifications. — 1981 Ed., § 1-752.

Effect of amendments. — D.C. Law 15-105 validated a previously made technical correction.

Legislative history of Law 4-123. — For

legislative history of D.C. Law 4-123, see Historical and Statutory Notes following § 1-751.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 1-751.

§ 1-753. Compliance by Mayor.

The Mayor of the District of Columbia shall comply with the requirements of these regulations and shall give written notice of compliance therewith to the Council of the District of Columbia within 60 calendar days after July 2, 1982.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 193, as added July 2, 1982, D.C. Law 4-23, § 4, 29 DCR 2084; Mar. 13, 2004, D.C. Law 15-105, § 33(e), 51 DCR 881.)

Prior Codifications. — 1981 Ed., § 1-753.

Effect of amendments. — D.C. Law 15-105 validated a previously made technical correction.

Emergency legislation. — For temporary establishment of an actuarially sound retirement replacement plan for pension benefits accrued after June 30, 1997, for police officers, fire fighters, and teachers, see §§ 101-204 of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Emergency Act of 1997 (D.C. Act 12-155, October 1, 1997, 44 DCR 5896), see §§ 101-204 of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Congressional Review Emergency Act of 1997 (D.C. Act 12-240, January 13, 1998, 45 DCR 531), see §§ 101-204 of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan and Fiscal Year 1998 Revised Budget Support Act of 1997 Technical Amendments Emergency Act of 1998 (D.C. Act 12-351, May 20, 1998, 45 DCR 3673), and see §§ 101-204 of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan and Fiscal Year 1998 Revised Budget Support Act of

1997 Technical Amendments Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-432, August 6, 1998, 45 DCR 5920).

Legislative history of Law 4-123. — For legislative history of D.C. Law 4-123, see Historical and Statutory Notes following § 1-751.

Legislative history of Law 12-58. — For legislative history of D.C. Law 12-58, see Historical and Statutory Notes following § 1-711.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 1-751.

Editor's notes. — Retirement replacement plan: Sections 101 through 204 of D.C. Law 12-58 provide for the temporary establishment of replacement retirement plans for pension benefits accrued after June 30, 1997, for police officers, fire fighters, and teachers, and provide for the full funding and management on an actuarially sound basis of all retirement funds entrusted to the District government for the benefit of teachers, members and officers of the Metropolitan Police Department, and employees of the D.C. Fire and Emergency Medical Services Department.

Section 209(b) of D.C. Law 12-58 provided that the act shall expire after 225 days of its having taken effect.

CHAPTER 8. DISTRICT OF COLUMBIA RETIREMENT FUNDS.

Subchapter I. Short Title, Findings, Definitions

Sec.

1-801.01. Findings and declaration of policy.

1-801.02. Definitions.

Subchapter II. Federal Benefit Payments Under District Retirement Programs

1-803.01. Obligation of federal government to make benefit payments.

1-803.02. Federal benefit payments described.

Subchapter III. Determinations and Review of Eligibility and Payments; Information Sharing

1-805.01. Determination of eligibility for and amount of Federal benefit payments made by Trustee.

1-805.02. Procedures for resolving claims arising from denied benefit payments.

1-805.03. Transfer of and access to records of District Government.

1-805.04. Federal information sharing for verification of benefit determinations.

Subchapter IV. District of Columbia Federal Pension Liability Trust Fund

1-807.01. Creation of Trust Fund.

1-807.02. Uses of amounts in Trust Fund.

1-807.03. Transfer of assets and obligations of District Retirement Funds.

1-807.04. Treatment of Trust Fund under certain laws.

1-807.05. Administration through Trustee.

1-807.06. Termination of Trust Fund.

Subchapter V. Responsibilities of District Government

1-809.01. Interim administration.

1-809.02. Replacement plan.

Subchapter VI. Financing of Benefit Payments After Depletion of Trust Fund

1-811.01. Creation of Federal Supplemental Fund.

1-811.02. Uses of amounts in Fund.

1-811.03. Determination of annual payment into Federal Supplemental Fund.

Sec.

1-811.04. Determination of methodology for making payments.

1-811.05. Special requirements upon discontinuation of Trust Fund.

1-811.06. Termination of Federal Supplemental Fund.

Subchapter VII. Reports

1-813.01. Annual valuations and reports by enrolled actuary.

1-813.02. Reports by Comptroller General.

Subchapter VIII. Judicial Enforcement

1-815.01. Judicial review.

1-815.02. Jurisdiction and venue.

1-815.03. Statute of limitations.

1-815.04. Treatment of misappropriation of fund amounts as Federal crime.

Subchapter IX. District of Columbia Federal Pension Fund

1-817.01. Creation of Fund.

1-817.02. Uses of amounts in Fund.

1-817.03. Transfer of assets and obligations of Trust Fund and Federal Supplemental Fund.

1-817.04. Determination of annual federal payments into D.C. Federal Pension Fund.

1-817.05. Administration through Pension Fund Trustee.

1-817.06. Applicability of other provisions to D.C. Federal Pension Fund.

Subchapter X. Miscellaneous

1-819.01. Coordination between Secretary, Trustee, and District Government.

1-819.02. Study of alternatives for financing Federal obligations.

1-819.03. Issuance of regulations by Secretary.

1-819.04. Effect on Reform Act and other laws.

1-819.05. [Reserved].

1-819.06. Full faith and credit.

1-819.07. Severability of provisions.

Subchapter XI. Applicability

1-821.01. Transition from District of Columbia administration.

*Subchapter I. Short Title, Findings, Definitions.***§ 1-801.01. Findings and declaration of policy.**(a) *Findings.* — The Congress finds that:

(1) State and municipal retirement programs should be funded on an actuarially sound basis;

(2) The retirement programs for the police officers and firefighters, teachers and judges of the District of Columbia had significant unfunded liabilities totaling approximately \$1,900,000,000 when the Federal government transferred those programs to the District of Columbia, and those liabilities have since increased to nearly \$4,800,000,000, an increase which is almost entirely attributable to the accumulation of interest on the value which existed at the time of transfer;

(3) The District of Columbia has fully met its financial obligations under the District of Columbia Retirement Reform Act of 1979 (Public Law 96-122);

(4) The growth of the unfunded liabilities of the three pension funds listed above did not occur because of any action taken or any failure to act that lay within the power of the District of Columbia government or the District of Columbia Retirement Board;

(5) The presence of the unfunded pension liability is having and will continue to have a negative impact on the District of Columbia's credit rating as it is a legal obligation and the total unfunded liability exceeds the total General Obligation debt of the District, and the costs associated with this liability are a contributing cause of the District's ongoing financial crisis;

(6) The obligations of the District associated with these pension programs in fiscal year 1997 represents nearly 10 percent of the District's revenue;

(7) The annual Federal contribution toward these costs under the District of Columbia Retirement Reform Act has remained \$52,000,000;

(8) If the unfunded pension liability situation is not resolved, in 2004 the District of Columbia would be responsible for annual costs exceeding \$800,000,000, a figure which would be impossible to meet without catastrophic impact on the District government's resources and programs;

(9) The financial resources of the District of Columbia are not adequate to discharge the unfunded liabilities of the retirement programs; and

(10) The level of benefits and funding of the current retirement programs were authorized by various Acts of Congress.

(b) *Policy.* — It is the policy of this chapter:

(1) To relieve the District of Columbia government of the responsibility for the unfunded pension liabilities transferred to it by the Federal government;

(2) For the Federal government to assume the legal responsibility for paying certain pension benefits (including certain unfunded pension liabilities which existed as of the day prior to introduction of this legislation) for the retirement plans of teachers, police, and firefighters;

(3) To provide for a responsible Federal system for payment of benefits accrued prior to the date of introduction of this legislation; and

(4) To require the establishment of replacement plans by the District of Columbia government for the current retirement plans for teachers, and police and firefighters.

(Aug. 5, 1997, 111 Stat. 715, Pub. L. 105-33, § 11002.)

Cross references. — Retirement Board and funds, establishment, Board to continue duties under retirement program after enactment of this chapter, see § 1-711.

Prior Codifications. — 1981 Ed., § 1-761.1.

Short title. — District of Columbia Retirement Protection Act of 1997: Section 11001 of subtitle A of Title XI of Pub. L. 105-33, 111 Stat. 715, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided that subtitle A may be cited as the “District of Columbia Retirement Protection Act of 1997.”

Effective date. — Section 11721 of Title XI

of Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided that except as otherwise provided in this title, the provisions of this title shall take effect on the later of October 1, 1997, or the day the District of Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District government for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended by this title.

§ 1-801.02. Definitions.

For purposes of this chapter, the following definitions shall apply:

(1) The term “contract” means the contract under § 1-807.05 between the Secretary and the Trustee, and includes any agreement with a department, agency, or instrumentality of the United States entered into under that section.

(2) The term “covered District employee” means a teacher of the District of Columbia public schools, or a member of the Metropolitan Police Force or the Fire Department of the District of Columbia, as defined under the District Retirement Program.

(3) The term “D.C. Federal Pension Fund” means the District of Columbia Teachers, Police Officers, and Firefighters Federal Pension Fund established under § 1-817.01.

(4) The term “District Government” means any entity treated as part of the District government under § 47-393(5), including the District of Columbia Retirement Board (as defined in § 1-702(5)).

(5) The term “District Retirement Fund” means the District of Columbia Police Officers and Fire Fighters Retirement Fund and the District of Columbia Teachers Retirement Fund, as defined in the Reform Act.

(6) The term “District Retirement Program” means any of the retirement programs for teachers and members of the Metropolitan Police Force and Fire Department, as described in § 1-702(7) as in effect on the day before the freeze date (except as provided under § 1-803.02(e) and (f) and as amended by § 11013 of the District of Columbia Retirement Protection Act of 1997).

(7) The term “enrolled actuary” means the enrolled actuary engaged by the Trustee under § 1-813.01(a).

(8) The term “Federal benefit payment” means a payment described in § 1-803.02.

(9) The term “Federal Supplemental Fund” means the Federal Supplemental District of Columbia Pension Fund created under § 1-811.01.

(10) The term “freeze date” means June 30, 1997.

(11) The term “person” means an individual; partnership; joint venture; corporation; mutual company; joint-stock company; trust; estate; unincorporated organization; association; employee organization; or department, agency, or instrumentality of the United States.

(12) The term “Reform Act” means the District of Columbia Retirement Reform Act (Public Law 96-122).

(13) The term “replacement plan” means the plan described in § 1-809.02.

(14) The term “replacement plan adoption date” means the date upon which the legislation establishing the replacement plan becomes effective, or the first day after the expiration of the 1-year period which begins on August 5, 1997, whichever occurs first.

(15) The term “Trust Fund” means the District of Columbia Federal Pension Liability Trust Fund established under § 1-807.01.

(16) The term “Secretary” means the Secretary of the Treasury or the Secretary’s designee.

(17) The term “Trustee” means the person or persons selected by the Secretary under § 1-807.05, or, beginning October 1, 2004, the Pension Fund Trustee selected by the Secretary under § 1-817.05.

(Aug. 5, 1997, 111 Stat. 716, Pub. L. 105-33, § 11003; Oct. 21, 1998, 112 Stat. 2681-530, Pub. L. 105-277, § 801(a); Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, § 1(a)(4), H.R. 5666 § 908(b); Nov. 22, 2003, 117 Stat. 1387, Pub. L. 108-133, § 3(b); Dec. 23, 2004, 118 Stat. 3969, Pub. L. 108-489, § 2(c).)

Prior Codifications. — 1981 Ed., § 1-761.2.

Effect of amendments. — Pub. L. 106-554, in par. (5), inserted “provided under § 1-803.02(e) and as” following “(except as”.

Pub. L. 108-113, in par. (5), inserted “and (f)” following “§ 1-803.02(e)”.

Pub. L. 108-489, in par. (16), inserted “, or, beginning October 1, 2004, the Pension Fund Trustee selected by the Secretary under § 1-

817.05” before the period; redesignated pars. (3) through (16) as pars. (4) through (17); and inserted a new par.

Effective date. — Section 908(c) of Title IX of H.R. 5666, incorporated by reference by Public Law 106-554 stated that the amendments made by section 908 shall apply with respect to federal benefit payments made after December 21, 2000.

Subchapter II. Federal Benefit Payments Under District Retirement Programs.

§ 1-803.01. Obligation of federal government to make benefit payments.

(a) *In general.* — In accordance with the provisions of this chapter, the Federal Government shall make Federal benefit payments associated with the pension plans for police officers, firefighters, and teachers of the District of Columbia.

(b) *No reversion of federal responsibility to District.* — At no point after the effective date of this chapter may the responsibility or any part thereof assigned to the federal Government under subsection (a) of this section for making Federal benefit payments revert to the District of Columbia.

(Aug. 5, 1997, 111 Stat. 717, Pub. L. 105-33, § 11011.)

Cross references. — Police Officers, Fire Fighters, and Teachers Retirement Benefit Re- placement Plan, trust assets transfer by the Police Officers and Fire Fighters’ Retirement

Fund, the Teachers' Retirement Fund, and the Judges' Retirement Fund, interim federal benefit payments, see § 1-903.05.

Prior Codifications. — 1981 Ed., § 1-762.1.

Editor's notes. — Reference to New Federal Program for Retirement of Judges of D.C. Courts: Sees 11085 of Title XI of Pub. L. 105-33, 111 Stat. 730..

§ 1-803.02. Federal benefit payments described.

(a) *In general.* — Subject to the succeeding provisions of this chapter, a "Federal benefit payment" is any benefit payment to which an individual is entitled under a District Retirement Program, in such amount and under such terms and conditions as may apply under such Program.

(b) *Treatment of service occurring after freeze date.* — Service after the freeze date shall not be credited for purposes of determining the amount of any Federal benefit payment. Nothing in this subsection shall be construed to affect the crediting of such service for any other purpose under the District Retirement Program.

(c) *Special rule regarding disability benefits.* — To the extent that any portion of a benefit payment to which an individual is entitled under a District Retirement Program is based on a determination of disability made by the District Government or the Trustee after the freeze date, the Federal benefit payment determined with respect to the individual shall be an amount equal to the deferred retirement benefit or normal retirement benefit the individual would receive if the individual left service on the day before the commencement of disability retirement benefits.

(d) *Special rule regarding certain death benefits.* —

(1) *In general.* — In the case of a benefit payment to which an individual is entitled under a District Retirement Program which is payable on the death of a covered District employee or former covered District employee and which is not determined by the length of service of the employee or former employee, the Federal benefit payment determined with respect to the individual shall be equal to the pre-freeze date percentage of the amount otherwise payable.

(2) *Pre-freeze date percentage defined.* — In paragraph (1) of this subsection, the "pre-freeze date percentage" with respect to a covered District employee or former covered District employee is the amount (expressed as a percentage) equal to the quotient of:

(A) The number of months of the covered District employee's or former covered District employee's service prior to the freeze date; divided by

(B) The total number of months of the covered District employee's or former covered District employee's service.

(e) *Treatment of increases in certain police service longevity payments.* — For purposes of subsection (a) of this section, in determining the amount of a Federal benefit payment made to an officer or member of the Metropolitan Police Department, the benefit payment to which the officer or member is entitled under the District Retirement Program shall include any amounts which would have been included in the benefit payment under such Program if the amendments made by the Police Recruiting and Retention Enhancement Amendment Act of 1999 (D.C. Law 13-101) had taken effect prior to the freeze date. The Secretary of the Treasury is authorized to estimate the additional

compensation for service longevity for purposes of determining the amount of a federal benefit payment for annuitants who retire on or after August 29, 1972, and on or before December 31, 2001, and to make federal benefit payments based upon such estimates.

(f) *Treatment of military service credit purchased by certain police and fire retirees.* — For purposes of subsection (a) of this section, in determining the amount of a Federal benefit payment made to an officer or member, the benefit payment to which the officer or member is entitled under the District Retirement Program shall include any amounts which would have been included in the benefit payment under such Program if the amendments made by the District of Columbia Military Retirement Equity Act of 2003 had taken effect prior to the freeze date.

(Aug. 5, 1997, 111 Stat. 718, Pub. L. 105-33, § 11012; Oct. 21, 1998, 112 Stat. 2681-531, Pub. L. 105-277, § 801(g)(1); Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, § 1(a)(4) H.R. 5666 § 908(a); Nov. 7, 2002, 116 Stat. 2051, Pub. L. 107-290, § 1; Nov. 22, 2003, 117 Stat. 1387, Pub. L. 108-133, § 3(a); Apr. 13, 2005, D.C. Law 15-354, § 6, 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 1-762.2.

Effect of amendments. — Pub. L. 106-554 added subsec. (e).

Pub. L. 107-290, in subsec. (e), added the last sentence.

Pub. L. 108-133 added subsec. (f)

D.C. Law 15-354, in subsec. (f), validated a previously made technical correction.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 1-523.01.

Effective date. — Section 908(c) of Title IX of H.R. 5666, incorporated by reference by Public Law 106-554 stated that the amendments

made by section 908 shall apply with respect to federal benefit payments made after December 21, 2000.

Section 2 of Public Law 107-290 stated that the amendment made by section 1 shall take effect as if included in the enactment of title IX of division A of the Miscellaneous Appropriations Act, 2001 (as enacted by reference in section 1(a)(4) of the Consolidated Appropriations Act, 2001) (Public Law 106-554).

References in text. — The District of Columbia Military Retirement Equity Act of 2003, referred to in subsec. (f), is Pub. L. 108-133, 117 Stat. 1386.

Subchapter III. Determinations and Review of Eligibility and Payments; Information Sharing.

§ 1-805.01. Determination of eligibility for and amount of Federal benefit payments made by Trustee.

Notwithstanding any provision of a District Retirement Program or any other law, rule, or regulation, the Trustee:

(1) Shall determine whether an individual is eligible to receive a Federal benefit payment under this chapter;

(2) Shall determine the amount and form of an individual's Federal benefit payment under this chapter; and

(3) May recoup or recover, or waive recoupment or recovery of, any amounts paid under this chapter as a result of errors or omissions by the Trustee, the District Government, or any other person.

(Aug. 5, 1997, 111 Stat. 720, Pub. L. 105-33, § 11021; Oct. 21, 1998, 112 Stat. 2681-531, Pub. L. 105-277, § 801(b).)

Prior Codifications. — 1981 Ed., § 1-763.1.

§ 1-805.02. Procedures for resolving claims arising from denied benefit payments.

(a) *Requiring notice and opportunity for review.* — In accordance with procedures approved by the Secretary, the Trustee shall provide to any individual whose claim for a Federal benefit payment under this chapter has been denied in whole or in part:

(1) Adequate written notice of such denial, setting forth the specific reasons for the denial in a manner calculated to be understood by the average participant in the District Retirement Program; and

(2) A reasonable opportunity for a full and fair review of the decision denying such claim.

(b) *Standard for review.* — Any factual determination made by the Trustee shall be presumed correct unless rebutted by clear and convincing evidence. The Trustee's interpretation and construction of the benefit provisions of the District Retirement Program and this chapter shall be entitled to great deference.

(Aug. 5, 1997, 111 Stat. 720, Pub. L. 105-33, § 11022.)

Prior Codifications. — 1981 Ed., § 1-763.2.

§ 1-805.03. Transfer of and access to records of District Government.

(a) *In general.* — Within 30 days after the Secretary or the Trustee requests, the District Government shall furnish copies of all records, documents, information, or data the Secretary or the Trustee deems necessary to carry out responsibilities under this chapter and the contract. Upon request, the District Government shall grant the Secretary or the Trustee direct access to such information systems, records, documents, information or data as the Secretary or Trustee requires to carry out responsibilities under this chapter or the contract.

(b) *Repayment by District Government.* — The District Government shall reimburse the Trust Fund for all costs, including benefit costs, that are attributable to errors or omissions in the transferred records that are identified within 3 years after such records are transferred.

(Aug. 5, 1997, 111 Stat. 721, Pub. L. 105-33, § 11023.)

Prior Codifications. — 1981 Ed., § 1-763.3.

§ 1-805.04. Federal information sharing for verification of benefit determinations.

(a) *In general.* — Except with respect to taxpayer returns and return

information subject to § 6103 of the Internal Revenue Code of 1986, the Secretary may:

(1) Secure directly from any department or agency of the United States information necessary to enable the Secretary to verify or confirm benefit determinations under this chapter; and

(2) By regulation authorize the Trustee to review such information for purposes of administering this chapter and the contract.

(b) Omitted.

(c) *Confidentiality.* — The Secretary may issue regulations governing the confidentiality of the information obtained pursuant to subsection (a) of this section and the provisions of law amended by § 11024(b) of the District of Columbia Retirement Protection Act of 1997.

(Aug. 5, 1997, 111 Stat. 721, Pub. L. 105-33, § 11024.)

Prior Codifications. — 1981 Ed., § 1-763.4.

References in text. — Section 6103 of the Internal Revenue Code of 1986, referred to in the introductory paragraph of (a), is 26 U.S.C. § 6103.

Section 11024(b) of the District of Columbia Retirement Protection Act of 1997, referred to in (c), is § 11024(b) of subtitle A of Title XI of Pub. L. 105-33, 111 Stat. 715.

Editor's notes. — Amendments to Internal Revenue Code: For amendments to the Internal Revenue Code related to District of Columbia Retirement Programs, see § 11024(b) of Title XI of Pub. L. 105-33, 111 Stat. 721, the National Capital Revitalization and Self-Government Improvement Act of 1997.

Subchapter IV. District of Columbia Federal Pension Liability Trust Fund.

§ 1-807.01. Creation of Trust Fund.

(a) *Establishment.* — There is established on the books of the Treasury the District of Columbia Federal Pension Liability Trust Fund, consisting of the assets transferred pursuant to § 1-807.03 and any income earned on the investment of such assets pursuant to subsection (b) of this section.

(b) *Investment of assets.* — The Trustee may invest the assets of the Trust Fund in private securities and any other form of investment deemed appropriate by the Secretary.

(Aug. 5, 1997, 111 Stat. 723, Pub. L. 105-33, § 11031.)

Prior Codifications. — 1981 Ed., § 1-764.1.

Editor's notes. — Payment of attorney fees: Section 130 of Pub. L. 105-277, 112 Stat. 2681-138, provided that "none of the funds contained in this Act may be made available to pay the fees of an attorney who represents a party who prevails in an action, including an administrative proceeding, brought against the District of Columbia Public Schools under the Individuals with Disabilities Education Act (20 U.S.C. 1400

et seq.) if: (1) the hourly rate of compensation of the attorney exceeds the hourly rate of compensation under § 11-2604(a), or (2) the maximum amount of compensation of the attorney exceeds the maximum amount of compensation under § 11-2604(b)(1), except that compensation and reimbursement in excess of such maximum may be approved for extended or complex representation in accordance with § 11-2604(c)."

§ 1-807.02. Uses of amounts in Trust Fund.

(a) *In general.* — Amounts in the Trust Fund shall be used:

(1) To make Federal benefit payments under this chapter;

(2) Subject to subsection (b)(1) of this section, to cover the reasonable and necessary expenses of administering the Trust Fund under the contract entered into pursuant to § 1-807.05(b);

(3) To cover the reasonable and necessary administrative expenses incurred by the Secretary in carrying out the Secretary's responsibilities under this chapter; and

(4) For such other purposes as are specified in this chapter.

(b) *Special rules regarding administrative expenses.* —

(1) *Budgeting; certification and approval.* — The administrative expenses of the Trust Fund shall be paid in accordance with an annual budget set forth by the Trustee which shall be subject to certification and approval by the Secretary.

(2) *Use of District Retirement Fund for interim administration.* — The Secretary is authorized to requisition from the District Retirement Fund such sums as are necessary to administer the Trust Fund (including expenses described in § 1-809.01(b)) until assets are transferred to the Trust Fund pursuant to § 1-807.03.

(Aug. 5, 1997, 111 Stat. 723, Pub. L. 105-33, § 11032; Oct. 21, 1998, 112 Stat. 2681-531, Pub. L. 105-277, § 801(c).)

Prior Codifications. — 1981 Ed., § 1-764.2.

§ 1-807.03. Transfer of assets and obligations of District Retirement Funds.

(a) *In general.* — As of the replacement plan adoption date, all obligations to make Federal benefit payments and all assets of the District Retirement Fund as of the replacement plan adoption date (except as provided in subsections (b) and (c) of this section) shall be transferred to the Trust Fund.

(b) *Designation of assets to be retained by District Retirement Fund.* — The Secretary shall designate assets with a value of \$1.275 billion that shall not be transferred from the District Retirement Fund under subsection (a) of this section. The Secretary's designation and valuation of the assets shall be final and binding.

(c) *Exception for certain employee contributions.* —

(1) *In general.* — Subsection (a) of this section shall not apply to assets of the District Retirement Fund consisting of any employee contributions deducted and withheld after the freeze date or any interest thereon (computed at a rate and in a manner determined by the Secretary).

(2) *Employee contributions defined.* — In paragraph (1) of this subsection, the term "employee contributions" means amounts deducted and withheld from the salaries of covered District employees and paid to the District Retirement Fund (and, in the case of teachers, amounts of additional deposits

paid to the District Retirement Fund), pursuant to the District Retirement Program.

(d) *Responsibilities of District Government.* —

(1) *In general.* — The transfer of assets from the District Retirement Fund under this section shall be made in accordance with the direction of the Secretary. The District Government shall promptly take all steps, and execute all documents, that the Secretary deems necessary to effect the transfer.

(2) *Final reconciliation of accounts.* — As soon as practicable after the replacement plan adoption date, the District Government shall furnish the Trustee a final reconciliation of accounts in connection with the transfer of assets and obligations to the Trust Fund. The allocation of assets under this section shall be adjusted in accordance with this reconciliation.

(e) *Methodology for designating assets.* —

(1) *In general.* — In carrying out subsection (b), the Secretary may develop and implement a methodology for designating assets after the replacement plan adoption date that takes into account the value of the District Retirement Fund as of the replacement plan adoption date and the proportion of such value represented by \$1.275 billion, together with the income (including returns on investments) earned on the assets of and withdrawals from and deposits to the Fund during the period between such date and the date on which the Secretary designates assets under subsection (b). In implementing a methodology under the previous sentence, the Secretary shall not be required to determine the value of designated assets as of the replacement plan adoption date. Nothing in this paragraph may be deemed to effect the entitlement of the District Retirement Fund to income (including returns on investments) earned after the replacement plan adoption date on assets designated for retention by the Fund.

(2) *Employee contributions; Judicial Retirement and Survivors Annuity Fund.* — The Secretary may develop and implement a methodology comparable to the methodology described in paragraph (1) in carrying out the requirements of subsection (c) and in designating assets to be transferred to the District of Columbia Judicial Retirement and Survivors Annuity Fund pursuant to § 1-714(c)(1).

(3) *Discretion of the Secretary.* — The Secretary's development and implementation of methodologies for designating assets under this subsection shall be final and binding.

(Aug. 5, 1997, 111 Stat. 723, Pub. L. 105-33, § 11033; Oct. 21, 1998, 112 Stat. 2681-532, Pub. L. 105-277, §§ 801(g)(2), 803.)

Cross references. — Police Officers and Fire Fighters' Retirement Fund, funding from assets designated under this section, see § 1-903.01.

Prior Codifications. — 1981 Ed., § 1-764.3.

§ 1-807.04. Treatment of Trust Fund under certain laws.

(a) *Internal Revenue Code.* — For purposes of the Internal Revenue Code of 1986:

(1) The Trust Fund shall be treated as a trust described in § 401(a) of the Code which is exempt from taxation under § 501(a) of the Code;

(2) Any transfer to or distribution from the Trust Fund shall be treated in the same manner as a transfer to or distribution from a trust described in § 401(a) of the Code; and

(3) The benefits provided by the Trust Fund shall be treated as benefits provided under a governmental plan maintained by the District of Columbia.

(b) *ERISA*. — For purposes of the Employee Retirement Income Security Act of 1974, the benefits provided by the Trust Fund shall be treated as benefits provided under a governmental plan maintained by the District of Columbia.

(c) *Application of certain future amendments to Internal Revenue Code*. — To the extent that any provision of subpart A of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. § 401 et seq.) is amended August 5, 1997, such provision as amended shall apply to the Trust Fund only to the extent the Secretary determines that application of the provision as amended is consistent with the administration of this chapter.

(Aug. 5, 1997, 111 Stat. 724, Pub. L. 105-33, § 11034.)

Prior Codifications. — 1981 Ed., § 1-764.4.

The “Employee Retirement Income Security Act of 1974,” referred to in (b), is codified as 29 U.S.C. § 1001 et seq.

References in text. — Sections 401 and 501 of the Internal Revenue Code, referred to in (a), are codified as 26 U.S.C. §§ 401 and 501, respectively.

§ 1-807.05. Administration through Trustee.

(a) *In general*. — As soon as practicable after the enactment of this chapter, the Secretary shall select a Trustee to administer the Trust Fund and otherwise carry out the responsibilities and duties specified in this chapter in accordance with the contract described in subsection (b) of this section.

(b) *Contract*. — The Secretary shall enter into a contract with the Trustee to provide for the management, investment, control and auditing of Trust Fund assets, the making of Federal benefit payments under this chapter from the Trust Fund, and such other matters as the Secretary deems appropriate. The Secretary shall enforce the provisions of the contract and otherwise monitor the administration of the Trust Fund.

(c) *Subcontracts*. — Notwithstanding any provision of a District Retirement Program or any other law, rule, or regulation, the Trustee may, with the approval of the Secretary, enter into one or more subcontracts with the District Government or any person to provide services to the Trustee in connection with its performance of the contract. The Trustee shall monitor the performance of any such subcontract and enforce its provisions.

(d) *Determination by the Secretary*. — Notwithstanding subsection (b) or any other provision of this chapter, the Secretary may determine, with respect to any function otherwise to be performed by the Trustee, that in the interest of economy and efficiency such function shall be performed by the Secretary rather than the Trustee.

(e) *Reports*. — The Trustee shall report to the Secretary, in a form and

manner and at such intervals as the Secretary may prescribe, on any matters or transactions relating to the Trust Fund, including financial matters, as the Secretary may require.

(Aug. 5, 1997, 111 Stat. 724, Pub. L. 105-33, § 11035; Oct. 21, 1998, 112 Stat. 2681-531, Pub. L. 105-277, § 801(d).)

Prior Codifications. — 1981 Ed., § 1-764.5.

§ 1-807.06. Termination of Trust Fund.

Effective upon the transfer of the obligations and assets of the Trust Fund to the D.C. Federal Pension Fund under § 1-817.03:

(1) The Trust Fund shall terminate; and

(2) The obligation to make Federal benefit payments from the Trust Fund, and any duty imposed on any person with respect to the Trust Fund, shall terminate.

(Aug. 5, 1997, 111 Stat. 724, Pub. L. 105-33, § 11036, as added Dec. 23, 2004, 118 Stat. 3969, Pub. L. 108-489, § 2(b)(1).)

Subchapter V. Responsibilities of District Government.

§ 1-809.01. Interim administration.

(a) *Administration of benefits until appointment of trustee.* — Notwithstanding subchapter II of this chapter, after the enactment of this chapter the District Government shall continue to discharge its duties and responsibilities under the District Retirement Program and the District Retirement Fund (as such duties and responsibilities are modified by this chapter), including the responsibility for Federal benefit payments, until such time as the Secretary notifies the District Government that the Secretary has directed the Trustee to carry out the duties and responsibilities required under the contract.

(b) *Reimbursement.* — The Secretary or the Trustee shall, at such times during or after the period of interim administration described in subsection (a) of this section as are deemed appropriate by the Secretary or the Trustee, reimburse the District Government for any administrative expenses incurred by the District Government in carrying out subsection (a) of this section:

(1) If the Secretary or the Trustee finds such expenses to be reasonable and necessary; and

(2) To the extent that the District Government is not reimbursed for such expenses from other sources.

(c) *Making District Retirement Fund whole.* — The District Government shall reimburse the District Retirement Fund for any benefits paid inconsistent with this chapter from the District Retirement Fund between the freeze date and such time as the Secretary notifies the District government that the Secretary has directed the Trustee to carry out the duties and responsibilities required under the contract.

(Aug. 5, 1997, 111 Stat. 725, Pub. L. 105-33, § 11041; Oct. 21, 1998, 112 Stat. 2681-531, Pub. L. 105-277, § 801(e); Apr. 12, 2000, D.C. Law 13-91, § 112, 47 DCR 520; Dec. 23, 2004, 118 Stat. 3969, Pub. L. 108-489, § 2(d).)

Cross references. — Retirement program management, District of Columbia Retirement Board, see § 1-711.

Prior Codifications. — 1981 Ed., § 1-765.1.

Effect of amendments. — D.C. Law 13-91 validated a previously made technical amendment in subsec. (b).

Pub. L. 108-489, in subsec. (b), deleted “from Trust Fund” from the heading.

Legislative history of Law 13-91. — Law

13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

§ 1-809.02. Replacement plan.

(a) *Adoption by District Government.* — Not later than one year after August 5, 1997, the District Government shall adopt a replacement plan for pension benefits for covered District employees, effective as of the freeze date.

(b) *Replacement plan imposed if District Government fails to adopt plan.* — If the District Government fails to adopt a replacement plan within the period prescribed in subsection (a) of this section, the retirement program applicable to police, firefighters, and teachers under the laws of the District of Columbia in effect as of June 1, 1997 (except as otherwise amended by this act), including all requirements of the program regarding benefits, contributions, and cost-of-living adjustments, shall be treated as the replacement plan for purposes of this chapter.

(c) *No payment of amounts paid as Federal benefit payment.* — Notwithstanding any provision of the Reform Act or any other law, rule, or regulation, the District Government is not required to pay any amount under any replacement plan under this chapter if the amount is paid as a Federal benefit payment under this chapter.

(Aug. 5, 1997, 111 Stat. 725, Pub. L. 105-33, § 11042.)

Prior Codifications. — 1981 Ed., § 1-765.2.

Subchapter VI. Financing of Benefit Payments After Depletion of Trust Fund.

§ 1-811.01. Creation of Federal Supplemental Fund.

(a) *Establishment.* — There is established on the books of the Treasury the Federal Supplemental District of Columbia Pension Fund, which shall be administered by the Secretary and shall consist of the following assets:

(1) Amounts deposited into such Fund under the provisions of this chapter.

(2) Any amount otherwise appropriated to such Fund.

(3) Any income earned on the investment of the assets of such Fund pursuant to subsection (b) of this section.

(b) *Investment of assets.* — The Secretary shall invest such portion of the Federal Supplemental Fund as is not in the judgment of the Secretary required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Federal Supplemental Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(c) *Recordkeeping for actuarial status.* — The Secretary shall provide for the keeping of such records as are necessary for determining the actuarial status of the Federal Supplemental Fund.

(Aug. 5, 1997, 111 Stat. 725, Pub. L. 105-33, § 11051.)

Prior Codifications. — 1981 Ed., § 1-766.1.

§ 1-811.02. Uses of amounts in Fund.

Amounts in the Federal Supplemental Fund shall be used for the accumulation of funds in order to finance obligations of the Federal Government for benefits and necessary administrative expenses under the provisions of this chapter, in accordance with the methodology selected by the Secretary under § 1-811.04(b), except that payments from the Fund for administrative expenses may be made only to the extent and in such amounts as are provided in advance in appropriations acts.

(Aug. 5, 1997, 111 Stat. 726, Pub. L. 105-33, § 11052; Oct. 21, 1998, 112 Stat. 2681-532, Pub. L. 105-277, § 801(g)(3).)

Prior Codifications. — 1981 Ed., § 1-766.2.

§ 1-811.03. Determination of annual payment into Federal Supplemental Fund.

(a) *Annual amortization amount.* — At the end of each applicable fiscal year the Secretary shall promptly pay into the Federal Supplemental Fund from the General Fund of the Treasury an amount equal to the annual amortization amount for the year (which may not be less than zero).

(b) *Administrative expenses.* — During each applicable fiscal year, the Secretary shall pay into the Federal Supplemental Fund from the General Fund of the Treasury amounts not to exceed the covered administrative expenses for the year.

(c) *Determination of amounts.* — For purposes of this section:

(1) The “original unfunded liability” is the amount that is the present value as of October 21, 1998 of future benefits payable from the Federal Supplemental Fund.

(2) The “annual amortization amount” is the amount determined by the enrolled actuary to be necessary to amortize in equal annual installments (until fully amortized):

- (A) The original unfunded liability over a 30-year period;
- (B) A net experience gain or loss over a 10-year period; and
- (C) Any other changes in actuarial liability over a 20-year period.

(3) The “covered administrative expenses” are the expenses determined by the Secretary (on an annual basis) to be necessary to administer the Federal Supplemental Fund.

(d) *Timing.* — The first applicable fiscal year under subsection (a) of this section is the first fiscal year that ends more than six months after the replacement plan adoption date.

(Aug. 5, 1997, 111 Stat. 726, Pub. L. 105-33, § 11053; Oct. 21, 1998, 112 Stat. 2681-532, Pub. L. 105-277, § 801(f).)

Prior Codifications. — 1981 Ed., § 1-766.3.

§ 1-811.04. Determination of methodology for making payments.

(a) *Notice to President and Congress.* — Not later than 18 months before the time that assets remaining in the Trust Fund are projected to be insufficient for making Federal benefit payments and covering necessary administrative expenses when due, the Secretary shall so advise the President and the Congress.

(b) *Selection of methodology.* — Before all available assets of the Trust Fund have been depleted, the Secretary shall determine whether Federal benefit payments and necessary administrative expenses under this chapter shall be made by one of the following methods:

(1) Continuation of the Trust Fund using payments from the Federal Supplemental Fund.

(2) Discontinuation of the Trust Fund, with payments made:

(A) By direct payment by the Secretary from the Federal Supplemental Fund; or

(B) From the Federal Supplemental Fund through another department or agency of the United States.

(c) *Arrangements by Secretary.* — The Secretary shall make appropriate arrangements to implement the determinations made in this section.

(Aug. 5, 1997, 111 Stat. 727, Pub. L. 105-33, § 11054; Apr. 20, 1999, D.C. Law 12-264, § 6(a), 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 1-766.4.

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned

Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was

assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

§ 1-811.05. Special requirements upon discontinuation of Trust Fund.

(a) *Successor to Trustee.* — If the Secretary determines that the Trust Fund shall be discontinued after it has been depleted of assets, the Secretary shall appoint a successor to the Trustee to administer the requirements of this chapter, with the same powers and subject to the same conditions as were applicable to the Trustee.

(b) *Continuing application of terms and conditions.* — The methodology selected by the Secretary under § 1-811.04(b), and the payment of benefits pursuant to such methodology, shall be subject to the same arrangements, terms, and conditions as were applicable under this chapter to the Trust Fund and the benefits paid under the Trust Fund (including provisions relating to the treatment of the Trust Fund under certain laws).

(Aug. 5, 1997, 111 Stat. 727, Pub. L. 105-33, § 11055.)

Prior Codifications. — 1981 Ed., § 1-766.5.

§ 1-811.06. Termination of Federal Supplemental Fund.

Effective upon the transfer of the assets of the Federal Supplemental Fund to the D.C. Federal Pension Fund under § 1-817.03:

- (1) The Federal Supplemental Fund shall terminate; and
- (2) Any duty imposed on any person with respect to the Federal Supplemental fund shall terminate.

(Aug. 5, 1997, 111 Stat. 724, Pub. L. 105-33, § 11056, as added Dec. 23, 2004, 118 Stat. 3969, Pub. L. 108-489, § 2(b)(2).)

Subchapter VII. Reports.

§ 1-813.01. Annual valuations and reports by enrolled actuary.

(a) *Determination of actuarial valuations.* — The Trustee shall engage an enrolled actuary (as defined in § 7701(a)(35) of the Internal Revenue Code of 1986 [26 U.S.C. § 7701(a)(35)]) who is a member of the American Academy of Actuaries to perform an annual actuarial valuation (in a manner and form determined by the Secretary) of the Trust Fund and the Federal Supplemental Fund for obligations assumed by the Federal Government under this chapter.

(b) *Annual report on status of Funds.* — The enrolled actuary shall prepare and submit to the Secretary and the Trustee an annual report on the actuarial status of the Trust Fund and the Federal Supplemental Fund, and shall include in the report:

(1) A projection of when assets in the Trust Fund will be insufficient to pay benefits and necessary administrative expenses when due; and

(2) A determination of the annual payment to the Federal Supplemental Fund under § 1-811.03.

(Aug. 5, 1997, 111 Stat. 727, Pub. L. 105-33, § 11061; Apr. 20, 1999, D.C. Law 12-264, § 6(b), 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 1-767.1.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 1-811.04.

References in text. — “Section 7701(a)(35) of the Internal Revenue Code of 1986,” referred to in (a), is codified as 26 U.S.C. § 7701(a)(35).

§ 1-813.02. Reports by Comptroller General.

(a) *In general.* — The Comptroller General is authorized to conduct evaluations of the administration of this chapter to ensure that the Trust Fund and Federal Supplemental Fund are being properly administered and shall report the findings of such evaluations to the Secretary and the Congress.

(b) *Access to information.* — For the purpose of evaluations under subsection (a) of this section the Comptroller General, subject to § 6103 of the Internal Revenue Code of 1986 [26 U.S.C. § 6103], shall have access to and the right to copy any books, accounts, records, correspondence or other pertinent documents that are in the possession of the Secretary or the Trustee, or any contractor or subcontractor of the Secretary or the Trustee.

(Aug. 5, 1997, 111 Stat. 728, Pub. L. 105-33, § 11062.)

Prior Codifications. — 1981 Ed., § 1-767.2.

Internal Revenue Code of 1986,” referred to in (b), is codified as 26 U.S.C. § 6103.

References in text. — “Section 6103 of the

Subchapter VIII. Judicial Enforcement.

§ 1-815.01. Judicial review.

(a) *In general.* — A civil action may be brought:

(1) By a participant or beneficiary to enforce or clarify rights to benefits from the Trust Fund or Federal Supplemental Fund under this chapter;

(2) By the Trustee:

(A) To enforce any claim arising (in whole or in part) under this chapter or the contract; or

(B) To recover benefits improperly paid from the Trust Fund or Federal Supplemental Fund or to clarify a participant's or beneficiary's rights to benefits from the Trust Fund or Federal Supplemental Fund; and

(3) By the Secretary to enforce any provision of this chapter or the contract.

(b) *Treatment of Trust Fund.* — The Trust Fund may sue and be sued as an entity.

(c) *Exclusive remedy.* — This subchapter shall be the exclusive means for bringing actions against the Trust Fund, the Trustee, or the Secretary under this chapter.

(Aug. 5, 1997, 111 Stat. 728, Pub. L. 105-33, § 11071.)

Prior Codifications. — 1981 Ed., § 1-768.1.

§ 1-815.02. Jurisdiction and venue.

(a) *In general.* — The United States District Court for the District of Columbia shall have exclusive jurisdiction and venue, regardless of the amount in controversy, of:

(1) Civil actions brought by participants or beneficiaries pursuant to this chapter, and

(2) Any other action otherwise arising (in whole or part) under this chapter or the contract.

(b) *Review by Court of Appeals.* — Notwithstanding any other provision of law, any order of the United States District Court for the District of Columbia issued pursuant to an action described in subsection (a) of this section that concerns the validity or enforceability of any provision of this chapter or seeks injunctive relief against the Secretary or Trustee under this chapter shall be reviewable only pursuant to a notice of appeal to the United States Court of Appeals for the District of Columbia Circuit.

(c) *Review by Supreme Court.* — Notwithstanding any other provision of law, review by the Supreme Court of the United States of a decision of the Court of Appeals that is issued pursuant to subsection (b) of this section may be had only if the petition for relief is filed within 20 calendar days after the entry of such decision.

(d) *Restrictions on declaratory or injunctive relief.* — No order of any court granting declaratory or injunctive relief against the Secretary or the Trustee shall take effect during the pendency of the action before such court, during the time an appeal may be taken, or (if an appeal is taken or petition for certiorari filed) during the period before the court has entered its final order disposing of the action.

(Aug. 5, 1997, 111 Stat. 728, Pub. L. 105-33, § 11072.)

Prior Codifications. — 1981 Ed., § 1-768.2.

§ 1-815.03. Statute of limitations.

(a) *Action for benefits.* — Any civil action by an individual with respect to a Federal benefit payment under this chapter shall be commenced within 180 days of a final benefit determination.

(b) *Action for breach of contract or other violations.* — Except as provided in subsection (c) of this section, any civil action for breach of the contract or any other violation of this chapter shall be commenced within the later of:

(1) Six years after the last act that constituted the alleged breach or violation or, in the case of an omission, six years after the last date on which the alleged breach or violation could have been cured; or

(2) Three years after the earliest date on which the plaintiff knew or could have reasonably been expected to have known of the act or omission on which the action is based.

(c) *Special rule for actions against Secretary.* — Notwithstanding subsection (b) of this section, any action against the Secretary arising (in whole or part) under this chapter or the contract shall be commenced within one year of the events giving rise to the cause of action.

(Aug. 5, 1997, 111 Stat. 729, Pub. L. 105-033, § 11073.)

Prior Codifications. — 1981 Ed., § 1-768.3.

§ 1-815.04. Treatment of misappropriation of fund amounts as Federal crime.

The provisions of § 664 of Title 18, United States Code (relating to theft or embezzlement from employee benefit plans), shall apply to the Trust Fund and the Federal Supplemental Fund.

(Aug. 5, 1997, 111 Stat. 729, Pub. L. 105-33, § 11074.)

Prior Codifications. — 1981 Ed., § 1-768.4.

Subchapter IX. District of Columbia Federal Pension Fund.

§ 1-817.01. Creation of Fund.

(a) *Establishment.* — There is established on the books of the Treasury the District of Columbia Teachers, Police Officers, and Firefighters Federal Pension Fund (hereafter referred to as the “D.C. Federal Pension Fund”), consisting of the following:

(1) The assets transferred pursuant to § 1-817.03.

(2) The annual Federal payments deposited pursuant to § 1-817.04.

(3) Any amounts otherwise appropriated to such Fund.

(4) Any income earned on the investment of the assets of such Fund pursuant to subsection (b) of this section.

(b) *Investment of assets.* — The Secretary shall invest such portion of the assets of the D.C. Federal Pension Fund as is not in the judgment of the Secretary required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the D.C. Federal Pension Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(c) *Recordkeeping for actuarial status.* — The Secretary shall provide for the

keeping of such records as are necessary for determining the actuarial status of the D.C. Federal Pension Fund.

(Aug. 5, 1997, 111 Stat. 729, Pub. L. 105-33, § 11081, as added Dec. 23, 2004, 118 Stat. 3966, Pub. L. 108-489, § 2(a)(3).)

Editor's notes. — Former § 1-817.01 has been recodified to § 1-819.01.

§ 1-817.02. Uses of amounts in Fund.

(a) *In general.* — Amounts in the D.C. Federal Pension Fund shall be used:

(1) To make Federal benefit payments under this chapter;

(2) Subject to subsection (b) of this section, to cover the reasonable and necessary administrative expenses incurred by any person in administering the D.C. Federal Pension Fund and carrying out this subchapter;

(3) For the accumulation of funds in order to finance obligations of the Federal Government for future benefits; and

(4) For such other purposes as are specified in this chapter.

(b) *Budgeting, certification, and approval of administrative expenses.* — The administrative expenses of the D.C. Federal Pension Fund shall be paid in accordance with an annual budget set forth by the Pension Fund Trustee which shall be subject to certification and approval by the Secretary.

(Aug. 5, 1997, 111 Stat. 729, Pub. L. 105-33, § 11082, as added Dec. 23, 2004, 118 Stat. 3967, Pub. L. 108-489, § 2(a)(3).)

Editor's notes. — Former § 1-817.02 has been recodified to § 1-819.02.

§ 1-817.03. Transfer of assets and obligations of Trust Fund and Federal Supplemental Fund.

(a) *Transfer of obligations.* — Effective October 1, 2004, all obligations to make Federal benefit payments shall be transferred from the Trust Fund to the D.C. Federal Pension Fund.

(b) *Transfer of assets.* — Effective October 1, 2004, all assets of the Trust Fund and all assets of the Federal Supplemental Fund as of such date shall be transferred to the D.C. Federal Pension Fund.

(Aug. 5, 1997, 111 Stat. 729, Pub. L. 105-33, § 11083, as added Dec. 23, 2004, 118 Stat. 3967, Pub. L. 108-489, § 2(a)(3).)

Editor's notes. — Former § 1-817.03 has been recodified to § 1-819.03.

§ 1-817.04. Determination of annual federal payments into D.C. Federal Pension Fund.

(a) *Annual amortization amount.* —

(1) *In general.* — At the end of each fiscal year (beginning with fiscal year

2005), the Secretary shall promptly pay into the D.C. Federal Pension Fund from the general fund of the Treasury an amount equal to the annual amortization amount for the year (which may not be less than zero).

(2) *Determination of amount.* — For purposes of paragraph (1) of this paragraph:

(A) The “original unfunded liability” is the present value, as of December 23, 2004, of expected future benefits payable from the Federal Supplemental Fund; and

(B) The “annual amortization amount” means the amount determined by the enrolled actuary to be necessary to amortize in equal annual installments (until fully amortized):

- (i) The original unfunded liability over a 30-year period;
- (ii) A net experience gain or loss over a 10-year period; and
- (iii) Any other changes in actuarial liability over a 20-year period.

(3) *Schedule for amortization.* — In determining the annual amortization amount under paragraph (2)(B) of this subsection, the enrolled actuary shall include amounts necessary to complete the amortization schedules used for determining the annual amortization amount for payments into the Federal Supplemental Fund under § 1-811.03 (as in effect prior to the enactment of this subchapter).

(b) *Administrative expense.* — During each fiscal year (beginning with fiscal year 2009), the Secretary shall pay into the D.C. Federal Pension Fund from the general fund of the Treasury the amounts necessary to pay the reasonable and necessary administrative expenses described in 1-817.02(a)(2) for the year.

(Aug. 5, 1997, 111 Stat. 729, Pub. L. 105-33, § 11084, as added Dec. 23, 2004, 118 Stat. 3967, Pub. L. 108-489, § 2(a)(3).)

Editor’s notes. — Former § 1-817.04 has been recodified to § 1-819.04.

§ 1-817.05. Administration through Pension Fund Trustee.

(a) *In general.* — The Secretary shall select a Pension Fund Trustee to carry out the responsibilities and duties specified in this subchapter in accordance with the contract described in subsection (b) of this section.

(b) *Contract.* — The Secretary shall enter into a contract with the Pension Fund Trustee to provide for the auditing of D.C. Federal Pension Fund assets, the making of Federal benefit payments under this chapter from the D.C. Federal Pension Fund, and such other matters as the Secretary deems appropriate. The Secretary shall enforce the provisions of the contract and otherwise monitor the administration of the D.C. Federal Pension Fund.

(c) *Subcontracts.* — Notwithstanding any provision of a District Retirement Program or any other law, rule, or regulation, the Pension Fund Trustee may, with the approval of the Secretary, enter into one or more subcontracts with the District Government or any person to provide services to the Pension Fund Trustee in connection with its performance of the contract. The Pension Fund

Trustee shall monitor the performance of any such subcontract and enforce its provisions.

(d) *Determination by the Secretary.* — Notwithstanding subsection (b) of this section or any other provision of this chapter, the Secretary may determine, with respect to any function otherwise to be performed by the Pension Fund Trustee, that in the interest of economy and efficiency such function shall be performed by the Secretary rather than the Pension Fund Trustee.

(e) *Reports.* — The Pension Fund Trustee shall report to the Secretary, in a form and manner and at such intervals as the Secretary may prescribe, on any matters under the responsibility of the Pension Fund Trustee as the Secretary may prescribe.

(Aug. 5, 1997, 111 Stat. 729, Pub. L. 105-33, § 11085, as added Dec. 23, 2004, 118 Stat. 3968, Pub. L. 108-489, § 2(a)(3).)

Editor's notes. — Former § 1-817.05 has been recodified to § 1-819.05.

§ 1-817.06. Applicability of other provisions to D.C. Federal Pension Fund.

The following provisions of this chapter shall apply with respect to the D.C. Federal Pension Fund in the same manner as such provisions applied with respect to the Trust Fund prior to October 1, 2004:

(1) Section 1-805.03(b) (relating to the repayment by the District Government of costs attributable to errors or omissions in transferred records).

(2) Section 1-807.04 (relating to the treatment of the Trust Fund under certain laws).

(3) Section 1-813.01 (relating to annual valuations and reports by the enrolled actuary), except that in applying § 1-813.01(b) to the D.C. Federal Pension Fund, the annual report required under such section shall include a determination of the annual payment to the D.C. Federal Pension Fund under § 1-817.04.

(4) Section 1-813.02 (relating to reports by the Comptroller General).

(5) Section 1-815.01 (relating to judicial review).

(6) Section 1-815.04 (relating to the treatment of misappropriation of Trust Fund amounts as a Federal crime).

(Aug. 5, 1997, 111 Stat. 729, Pub. L. 105-33, § 11086, as added Dec. 23, 2004, 118 Stat. 3968, Pub. L. 108-489, § 2(a)(3).)

Editor's notes. — Former § 1-817.06 has been recodified to § 1-819.06.

Subchapter X. Miscellaneous.

§ 1-819.01. Coordination between Secretary, Trustee, and District Government.

The Secretary, Trustee, and District Government shall carry out responsi-

bilities under this chapter and under the contract in a manner which promotes the cost-effective and efficient administration of benefit payments under the District Retirement Programs, and in a manner which avoids unnecessary interruptions and delays in paying individuals the full benefits to which they are entitled under such Programs.

(Aug. 5, 1997, 111 Stat. 729, Pub. L. 105-33, § 11091, formerly § 11081; renumbered Dec. 23, 2004, 118 Stat. 3966, Pub. L. 108-489, § 2(a)(1), (2).)

Prior Codifications. — 2001 Ed., § 1-817.01.
1981 Ed., § 1-769.1.

Editor's notes. — Former 1-819.01 has been recodified as § 1-821.01.

§ 1-819.02. Study of alternatives for financing Federal obligations.

(a) *In general.* — As soon as practicable after the date of the enactment of this chapter, the Secretary shall enter into a contract with an independent consultant to conduct a study of actuarial alternatives for financing the federal obligations assumed under this chapter, together with an analysis of the impact of each alternative on the federal budget. The Secretary and the District Government shall cooperate with the consultant and shall provide direct access to such information systems, records, documents, information, or data as will enable the consultant to conduct the study.

(b) *Deadline.* — The contract entered into under subsection (a) of this section shall require the consultant to report the results of the study not later than 12 months after the date of enactment of this act.

(c) *No effect on Federal obligations.* — Nothing in this section may be construed to affect any obligation of the Federal Government to make payments under this chapter.

(Aug. 5, 1997, 111 Stat. 729, Pub. L. 105-33, § 11092, formerly § 11082; renumbered Dec. 23, 2004, 118 Stat. 3966, Pub. L. 108-489, § 2(a)(1), (2).)

Prior Codifications. — 2001 Ed., § 1-817.02.
1981 Ed., § 1-769.2.

References in text. — “This act,” referred to in (b), is the National Capital Revitalization and Self-Government Improvement Act of 1997, Title XI of Pub. L. 105-33, 111 Stat. 712. “The date of enactment of this chapter” and “the date of enactment of this Act,” referred to

in this section, is the later of October 1, 1997, or the day the District of Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District of Columbia government for fiscal year 1998 meet the requirements of § 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995.

§ 1-819.03. Issuance of regulations by Secretary.

The Secretary is authorized to issue regulations to implement, interpret, administer and carry out the purposes of this chapter, and, in the Secretary's discretion, those regulations may have retroactive effect.

(Aug. 5, 1997, 111 Stat. 730, Pub. L. 105-33, § 11093, formerly § 11083; renumbered Dec. 23, 2004, 118 Stat. 3966, Pub. L. 108-489, § 2(a)(1), (2).)

Prior Codifications. — 2001 Ed., § 1-817.03. 1981 Ed., § 1-769.3.

§ 1-819.04. Effect on Reform Act and other laws.

(a) *Reform Act.* — This chapter supersedes any provision of the Reform Act inconsistent with this chapter and the regulations thereunder.

(b) *No effect on tax treatment of benefits.* — Except as otherwise specifically provided, nothing in this chapter may be construed to affect the application of any provision of the Internal Revenue Code of 1986 to any annuity or other benefit provided to or on behalf of any individual, including any disability benefit or any portion of a retirement benefit attributable to an individual's disability status.

(c) *No effect on benefits for Park Police and Secret Service.* — Nothing in this chapter shall be deemed to alter or amend in any way the provisions of existing law (including the Reform Act) relating to the program of annuities, other retirement benefits, or medical benefits for members and officers, retired members and officers, and survivors thereof, of the United States Park Police force, the United States Secret Service, or the United States Secret Service Uniformed Division.

(Aug. 5, 1997, 111 Stat. 730, Pub. L. 105-33, § 11094(a)(1), (b), (c), formerly § 11084(a)(1), (b), (c); renumbered Dec. 23, 2004, 118 Stat. 3966, Pub. L. 108-489, § 2(a)(1), (2).)

Prior Codifications. — 2001 Ed., § 1-817.04. 1981 Ed., § 1-769.4.

References in text. — The “Internal Revenue Code of 1986,” referred to in (b), is codified as Title 26 of the United States Code.

§ 1-819.05. [Reserved].

Prior Codifications. — 2001 Ed., § 1-817.05. 1981 Ed., § 1-769.5.

§ 1-819.06. Full faith and credit.

Federal obligations for benefits under this chapter are backed by the full faith and credit of the United States.

(Aug. 5, 1997, 111 Stat. 730, Pub. L. 105-33, § 11096, formerly § 11086; renumbered Dec. 23, 2004, 118 Stat. 3966, Pub. L. 108-489, § 2(a)(1), (2).)

Prior Codifications. — 2001 Ed., § 1-817.06. 1981 Ed., § 1-769.6.

§ 1-819.07. Severability of provisions.

If any provision of this chapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(Aug. 5, 1997, 111 Stat. 730, Pub. L. 105-33, § 11097, formerly § 11087; renumbered Dec. 23, 2004, 118 Stat. 3966, Pub. L. 108-489, § 2(a)(1), (2).)

Prior Codifications. — 2001 Ed., § 1-817.07. 1981 Ed., § 1-769.7.

Subchapter XI. Applicability.

§ 1-821.01. Transition from District of Columbia administration.

Sections 1-805.03, 1-807.02(b)(2), 1-807.03(d), and 1-809.01 shall apply to the administration of the District of Columbia Judges Retirement Fund established under § 1-714, the District of Columbia Judicial Retirement and Survivors Annuity Fund established under § 11-1570, and the retirement program for judges under subchapter III of Chapter 15 of Title 11, except as follows:

(1) In applying [each such] section:

(A) Any reference to this chapter shall instead refer to subchapter III of Chapter 15 of Title 11;

(B) Any reference to the District Retirement Program shall be deemed to include the retirement program for judges under subchapter III of Chapter 15 of Title 11;

(C) Any reference to the District Retirement Fund shall be deemed to include the District of Columbia Judges Retirement Fund established under § 1-714;

(D) Any reference to federal benefit payments shall be deemed to include judges retirement pay, annuities, refunds, and allowances under subchapter III of Chapter 15 of Title 11;

(E) Any reference to the Trust Fund shall instead refer to the District of Columbia Judicial Retirement and Survivors Annuity Fund established under § 11-1570;

(F) Any reference to § 1-807.03 shall instead refer to § 1-714; and

(G) Any reference to subchapter II shall instead refer to § 11-1570.

(2) In applying § 1-805.03:

(A) Any reference to the contract shall instead refer to the agreement referred to in § 11-1570(b); and

(B) Any reference to the Trustee shall instead refer to the Trustee or contractor referred to in § 11-1570(b).

(3) In applying § 1-809.01(d):

(A) Any reference to this section shall instead refer to § 1-714; and

(B) Any reference to the Trustee shall instead refer to the Secretary or the Trustee or contractor referred to in § 11-1570(b).

(4) In applying § 1-765.1(b), any reference to the Trustee shall instead refer to the Trustee or contractor referred to in § 11-1570(b).

(Oct. 21, 1998, 112 Stat. 2419, Pub. L. 105-274, § 2(d)(2); Oct. 21, 1998, 112 Stat. 2681-536, Pub. L. 105-277, § 804(d)(2).)

Prior Codifications. — 2001 Ed., § 1-819.01.

1981 Ed., § 1-769.21.

Effective date. — Section 2(d)(3) of Pub. L. 105-274 and § 804(d)(3) of Pub. L. 105-277 provide that § 11252(c) of Pub. L. 105-33, as amended by §§ 2(d)(1) and (e)(3) of Pub. L.

105-274 and §§ 804(d)(1) and (e)(3) of Pub. L. 105-277, shall take effect on the Dates on which the assets of the District of Columbia Judges Retirement Fund are transferred to the District of Columbia Judicial Retirement and Survivors Annuity Fund.

CHAPTER 9. POLICE OFFICERS, FIRE FIGHTERS, AND TEACHERS RETIREMENT BENEFIT REPLACEMENT PLAN.

Subchapter I. Findings and Definitions

Sec.

- 1-901.01. Findings and purpose.
- 1-901.02. Definitions.

Subchapter II. Retirement Funds

- 1-903.01. Retirement fund for police officers and fire fighters.
- 1-903.02. Retirement fund for teachers.
- 1-903.03. Management of the Funds.
- 1-903.04. Payments from retirement funds.
- 1-903.05. Interim federal benefit payments.
- 1-903.06. Annual audit.

Subchapter III. Establishment of Replacement Retirement and Disability Benefits Plans

- 1-905.01. Replacement program for covered District employees.
- 1-905.02. Eligibility and benefits determinations.
- 1-905.03. Tax treatment of plan.

Subchapter IV. Financing of Retirement Benefits

- 1-907.01. Limitation on investment of retirement funds.
- 1-907.02. District of Columbia payment to the Funds.

Sec.

- 1-907.03. Calculation of District of Columbia payment to the Funds.
- 1-907.04. Actuarial statement and opinion.
- 1-907.05. Information about retirement programs.

Subchapter V. Reporting and Disclosure Requirements; Bonding

- 1-909.01. Personal financial disclosure by the Retirement Board.
- 1-909.02. Annual report.
- 1-909.03. Summary plan description.
- 1-909.04. Reports and disclosure to participants and beneficiaries.
- 1-909.05. Disclosure to the public.
- 1-909.06. Reporting of participants' benefit rights.
- 1-909.07. Retention of records.
- 1-909.08. Criminal penalties.
- 1-909.09. Bonding.

Subchapter VI. Miscellaneous

- 1-911.01. Civil enforcement.
- 1-911.02. Limitations on actions.
- 1-911.03. Alienation of benefits.
- 1-911.04. Effect on other laws.
- 1-911.04a. Continuative administration.

Subchapter I. Findings and Definitions.

§ 1-901.01. Findings and purpose.

(a) The Council of the District of Columbia finds the following:

(1) When the federal government established separate retirement funds for police officers, fire fighters, and teachers, and established a retirement board with responsibility for managing these retirement funds, it significantly unfunded the liabilities of the retirement funds in an amount totaling approximately \$2,600,000,000.

(2) The approximate \$2,600,000,000 unfunded liability has increased to nearly \$4,800,000,000 due primarily to the accumulation of interest on the initial balance, not because of any action taken or any failure to act on the part of the District government or the District of Columbia Retirement Board.

(3) Because the unfunded liability is a legal obligation of the District government and exceeds the total General Obligation debt of the District, the presence of the unfunded pension liability has had a significant negative impact on the District's credit rating.

(4) The costs associated with the liability have been a contributing cause to the District's ongoing financial crisis.

(5) Pursuant to the Retirement Protection Act, the federal government

will relieve the District government of the responsibility for the unfunded pension liabilities transferred to the District in 1979, and will assume the legal responsibility for payment of retirement benefits accrued by police officers, fire fighters, and teachers prior to July 1, 1997.

(6) The Retirement Protection Act requires the establishment by the District government of a replacement plan for the current pension benefits for police officers, fire fighters, and teachers.

(b) It is the purpose of this chapter to accomplish the following:

(1) Establishment of replacement retirement plans for pension benefits accrued after June 30, 1997, for police officers, fire fighters, and teachers; and

(2) Provision for full funding and management on an actuarially sound basis of all retirement funds entrusted to the District government for the benefit of teachers, members and officers of the Metropolitan Police Department, and employees of the Fire and Emergency Medical Services Department.

(Sept. 18, 1998, D.C. Law 12-152, § 101, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-781.1.

Legislative history of Law 12-152. — Law 12-152, the “Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Act of 1998,” was introduced in Council and assigned Bill No. 12-386, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 7, 1998, and May 5, 1998, respectively. Signed by the Mayor on May 22, 1998, it was assigned Act No. 12-369 and transmitted to both Houses of Congress for its review. D.C. Law 12-152 became effective on September 18, 1998.

References in text. — The “Retirement Protection Act,” referred to in (a)(5) and (6), is subtitle A of Title XI of Pub. L. 105-33, 111 Stat. 715.

Editor’s notes. — Application of Law 12-152: Section 209 of D.C. Law 12-152 provided that the act shall apply as of October 1, 1997.

Management and Financing of Retirement Benefits: Title I of D.C. Law 12-152, pertaining to the management and financing of police officers, fire fighters, and teachers retirement benefits, is codified in this chapter as §§ 1-901.01 through 1-909.09.

§ 1-901.02. Definitions.

For the purposes of this chapter, the term:

(1) “Covered District employee” or “participant” means a teacher of the District of Columbia public schools, a member of the Metropolitan Police Department, or a member of the Fire and Emergency Medical Services Department. It does not include an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service, to whom the Police and Firemen’s Retirement Act applies.

(2) “Current value” means the fair market value, where available (as determined in good faith by a fiduciary in accordance with regulations promulgated by the Retirement Board), or otherwise the fair value (as determined in good faith by a fiduciary in accordance with regulations promulgated by the Retirement Board), assuming an orderly liquidation when so determined.

(2A) “Domestic partner” shall have the same meaning as provided in § 32-701(3).

(3) “Employee contribution” means amounts deducted and withheld from the salaries of covered District employees and paid to the Funds (and in the

case of teachers, amounts of additional deposits paid to the Funds), pursuant to this chapter.

(4) “Employee organization” means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which individuals covered by the Retirement Program participate and which exists for the purpose, in whole or in part, of dealing with the District government concerning the Retirement Program.

(5) “Enrolled actuary” means an actuary enrolled under subtitle C of Title III of the Employee Retirement Income Security Act of 1974, approved September 2, 1974 (88 Stat. 1002; 29 U.S.C. § 3041 et seq.).

(6) “Federal Benefit Payment” means any benefit payment to which an individual is entitled under the Retirement Program, in an amount and under terms and conditions as may apply under the Retirement Program.

(7)(A) “Fiduciary” means, except as otherwise provided in subparagraph (B) of this paragraph, any individual who, with respect to the Funds:

(i) Exercises any discretionary authority or discretionary control respecting management of the Funds or exercises any discretionary authority or discretionary control respecting management or disposition of its assets;

(ii) Renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Funds, or has any authority or responsibility to do so; or

(iii) Has any discretionary authority or discretionary responsibility in the administration of the Funds.

(B) If any money or other property of the Funds is invested in securities issued by an investment company registered under title I of “An Act To provide for the registration and regulation of investment companies and investment advisers, and for other purposes, approved August 22, 1940 (54 Stat. 789; 15 U.S.C. § 80a-1 et seq.), that investment shall not by itself cause the investment company or the investment company’s adviser or principal underwriter to be deemed to be a fiduciary or a party in interest as those terms are defined in this section. Nothing contained in this subparagraph shall limit the duties imposed on that investment company, investment adviser, or principal underwriter by any other law.

(8) “Funds” means collectively the Police Officers and Fire Fighters’ Retirement Fund, the Teachers’ Retirement Fund, or the Judges’ Retirement Fund, but only until the Judges’ Retirement Fund is transferred pursuant to § 11252 of the Retirement Protection Act, approved August 5, 1997 (P.L. 105-33; 111 Stat. 758).

(9) “Judge” means a judge as defined in § 11-1561(1).

(10) “Judges’ Retirement Fund” means the District of Columbia Judges’ Retirement Fund, established under § 1-714(a).

(11) “Party in interest” means:

(A) Any person (including a member of the Retirement Board) having fiduciary responsibilities for the administration of assets in the Funds;

(B) Any person providing services to the Funds;

(C) The government of the District of Columbia;

(D) An employee organization; or

(E) A spouse or domestic partner, ancestor, lineal descendant, or spouse or domestic partner of a lineal descendant of any individual described in subparagraph (A) or (B) of this paragraph.

(12) “Police and Firemen’s Retirement Act” means the Policemen and Firemen’s Retirement and Disability Act amendments of 1957, § 5-701 et seq.

(13) “Police Officers and Fire Fighters’ Retirement Fund” means the District of Columbia Police Officers and Fire Fighters’ Retirement Fund established under § 1-712(a).

(13A) “Post employment benefit programs” has the same meaning as that term is defined in § 1-702(22).

(14) “Qualified public accountant” means a person who is a certified public accountant, certified by a regulatory authority of a state.

(15) “Retirement Board” means the District of Columbia Retirement Board established by § 1-711(a).

(16) “Retirement Program” means:

(A) The program of annuities and other retirement and disability benefits for members and officers of the Metropolitan Police Department and the Fire and Emergency Medical Services Department;

(B) The program of annuities and other retirement and disability benefits for judges of the courts of the District of Columbia under § 11-1561 et seq., but only until § 1-714 is terminated and transferred pursuant to § 11252 of the Retirement Protection Act, approved August 5, 1997 (P.L. 105-33; 111 Stat. 758); and

(C) The program of annuities and other retirement and disability benefits for teachers in the public day schools of the District of Columbia.

(17) “Retirement Protection Act” means the District of Columbia Retirement Protection Act of 1997, Subtitle A of Title XI of the Balanced Budget Act of 1997, approved August 5, 1997 (P.L. 105-33; 111 Stat. 715) (“Retirement Protection Act”).

(18) “Retirement Reform Act” means the District of Columbia Retirement Reform Act, § 1-701 et seq. (“Retirement Reform Act”).

(19) “Security” means a security as defined in § 2(1) of the Securities Act of 1933, approved May 27, 1933 (48 Stat. 74; 15 U.S.C. § 77b(1)).

(20) “State” means any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone.

(21) “Teacher” means a teacher as defined in § 38-2021.13.

(22) “Teachers’ Retirement Fund” means the District of Columbia Teachers’ Retirement Fund established under § 1-713.

(23) “Trust” means the \$1.275 billion in assets in the possession or control of the Retirement Board for post June 30, 1997, benefits and any contributions made to the Funds after June 30, 1997, for benefits accrued after June 30, 1997.

(Sept. 18, 1998, D.C. Law 12-152, § 102, 45 DCR 4045; Dec. 7, 2004, D.C. Law 15-205, § 1013(a), 51 DCR 8441; Apr. 7, 2006, D.C. Law 16-91, § 125(b)(1), 52 DCR 10637; Sept. 12, 2008, D.C. Law 17-231, § 5, 55 DCR 6758.)

Prior Codifications. — 1981 Ed., § 1-781.2.

Effect of amendments. — D.C. Law 15-205 added par. (13A)

D.C. Law 16-91, in par. (13A), validated a previously made technical correction.

D.C. Law 17-231 added par. (2A); and, in par. (11)(A), substituted “spouse or domestic partner” for “spouse”.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 1-702.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 1-301.45.

References in text. — Section 11252 of the Retirement Protection Act, referred to in (8) and (16)(B), is codified at §§ 1-711, 1-714, and 1-819.01.

Editor’s notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

For conditional applicability of subtitle B of Title I of D.C. Law 15-205, see notes under § 1-911.04a.

Subchapter II. Retirement Funds.

§ 1-903.01. Retirement fund for police officers and fire fighters.

(a) The Police Officers and Fire Fighters’ Retirement Fund shall continue in existence and shall be the fund into which the following deposits shall be made, which shall constitute the assets of the fund:

(1) Any employee contribution amount paid after June 30, 1997, to the Retirement Board pursuant to § 5-741 or § 5-704(e)(1) or § 5-706(a), respectively;

(2) Any amount appropriated by the District government for the fund in accordance with § 1-905.02;

(3) Any return on investment of the assets of the fund; and

(4) The amount derived from the \$1.275 billion of designated assets provided for pursuant to § 1-807.03.

(b) After the 30-day period following October 1, 1997, or after the end of the 30-day period beginning on the date on which funds are first appropriated to the Police Officers and Fire Fighters’ Retirement Fund for Fiscal Year 1998, whichever is later, all payments of annuities and other retirement and disability benefits (including refunds and lump-sum payments) under the Police and Firemen’s Retirement Act shall be made from the Fund (except for any such payment which is made to an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service, or to a beneficiary of any such officer or member).

(Sept. 18, 1998, D.C. Law 12-152, § 111, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-782.1.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Editor’s notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.1.

§ 1-903.02. Retirement fund for teachers.

(a) The Teachers’ Retirement Fund shall continue in existence and shall be

the fund into which the following deposits shall be made, which shall constitute the assets of the fund:

(1) Any employee contribution amount paid to the Retirement Board pursuant to subchapter II of Chapter 20 of Title 38, or pursuant to § 38-2061.02;

(2) Any asset transferred to the fund under subsection (b) of this section;

(3) Any amount appropriated by the District government for the fund in accordance with § 1-905.02; and

(4) Any return on investment of assets of the fund.

(b) After June 30, 1997, annuities and other retirement and disability benefits (including refunds and lump-sum payments) for the benefits of covered teachers shall become assets of the fund.

(Sept. 18, 1998, D.C. Law 12-152, § 112, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-782.2.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-903.03. Management of the Funds.

(a) The Retirement Board shall be the custodian of the assets of the Funds and shall manage and invest the assets in accordance with the Retirement Reform Act and this chapter.

(b) The assets of the Funds shall be kept separate from other monies that may be under the control of the Retirement Board, but need not be kept separate from the assets of the separate funds comprising the Funds if the Retirement Board determines that commingling of those assets is advisable for investment purposes.

(c) The Retirement Board shall maintain, in an appropriate depository, a cash reserve for the Funds in an amount determined by the Retirement Board to be sufficient to meet current outlays for annuities and other retirement and disability benefits authorized to be paid from the Funds.

(Sept. 18, 1998, D.C. Law 12-152, § 113, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-782.3.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

References in text. — The "Retirement

Reform Act," referred to in (a), is the Act of November 17, 1979, 93 Stat. 866, Pub. L. 96-122.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-903.04. Payments from retirement funds.

(a) The Retirement Board shall determine the amount of any payments for annuities or other retirement or disability benefits (including refunds and lump-sum payments) required to be made from the trust assets of the Police

Officers and Fire Fighters' Retirement Fund or the Teachers' Retirement Fund. The Retirement Board shall make the payments from the appropriate fund.

(b) Once authorized pursuant to the appropriation process, the Retirement Board may make payments from the Funds sufficient to cover the cost of the management of the assets and the reasonable and necessary administrative expenses of the Retirement Board, including trustee and staff compensation, and liability insurance.

(Sept. 18, 1998, D.C. Law 12-152, § 114, 45 DCR 4045; Apr. 13, 2005, D.C. Law 15-354, § 4(a), 52 DCR 2638; Apr. 7, 2006, D.C. Law 16-91, § 126, 52 DCR 10637.)

Prior Codifications. — 1981 Ed., § 1-782.4.

Effect of amendments. — D.C. Law 15-354, in subsec. (a), substituted "The Retirement Board shall determine the amount of" for "The Mayor shall notify the Retirement Board".

D.C. Law 16-91, in par. (a), validated a previously made technical correction.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see His-

torical and Statutory Notes following § 1-901.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 1-523.01.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-903.05. Interim federal benefit payments.

(a) Effective October 1, 1997, until the transfer of the assets required by the Retirement Protection Act is implemented, the Retirement Board shall make disbursements to the District government, or other entity as may be directed by the Secretary of the Treasury, from the trust assets of the Funds to make the Federal Benefit Payment obligation created pursuant to § 1-803.01 for benefits accrued by the covered District employees until June 30, 1997.

(b) No part of the employee contributions of the covered District employees after June 30, 1997, or the \$1.275 billion of designated assets provided for pursuant to § 807.03, may be used to make the Federal Benefit Payment obligation.

(Sept. 18, 1998, D.C. Law 12-152, § 115, 45 DCR 4045.)

Cross references. — District of Columbia Retirement Board, responsibility for federal benefit payments, see § 1-711.

Prior Codifications. — 1981 Ed., § 1-782.5.

Legislative history of Law 12-152. — For

legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-903.06. Annual audit.

(a) The examination performed by the independent qualified public accountant engaged pursuant to § 1-732(a)(3)(A) shall be conducted in accordance with generally accepted auditing standards and shall involve such tests of the books and records of the Funds and the Retirement Program as are considered necessary by the accountant. The independent qualified public accountant shall also offer his opinion as to whether the separate schedules required by

subsection (b) of this section and the summary material required under § 1-907.03 present fairly, in all material respects, the information contained therein when considered in conjunction with the financial statements taken as a whole. The opinion by the independent qualified public accountant shall be made a part of the annual report required pursuant to § 1-907.02. In offering his opinion, the accountant may rely on the correctness of any actuarial matter certified to by an enrolled actuary if he so states his reliance.

(b)(1) The financial statement shall contain a statement of assets and liabilities, and a statement of changes in net assets available for benefits under the retirement program, which shall include details of revenues and expenses and other changes aggregated by general source and application. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the Retirement Program, including any significant changes in the Retirement Program made during the period and the impact of the changes on benefits; the funding policy (including the policy with respect to prior service cost), and any changes in the policy during the year; a description of any significant changes in benefits made during the period; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; and any other matters necessary to fully and fairly present the financial statements of the Funds.

(2) The statement required under paragraph (1) of this subsection shall have attached the following information in separate schedules:

(A) A statement of the assets and liabilities of the Funds, aggregated by categories and valued at their current value, and the same data displayed in comparative form for the end of the previous fiscal year;

(B) A statement of receipts in and disbursements from the Funds during the preceding 12-month period, aggregated by general source and application;

(C) A schedule of all assets held for investment purposes, aggregated and identified by issuer, borrower, or lessor, or similar party to the transaction (including a notation as to whether the party is known to be a party in interest), maturity date, rate of interest, collateral, par or maturity value, cost, and current value;

(D) A schedule of each transaction involving a person known to be a party in interest, the identity of the party in interest and his relationship, or that of any other party in interest, to the Funds, and a description of each asset to which the transaction relates; the purchase or selling price if a sale or purchase, the rental rate if a lease, or the interest rate and maturity date if a loan; expenses incurred in connection with the transaction; and the cost of the asset, the current value of the asset, and the net gain or loss on each transaction;

(E) A schedule of all loans or fixed income obligations that were in default as of the close of the fiscal year or were classified during the year as uncollectible and the following information with respect to each loan on the schedule (including a notation as to whether parties involved are known to be parties in interest): the original principal amount of the loan; the amount of

principal and interest received during the reporting year; the unpaid balance; the identity and address of the obligor; a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms); and the amount of principal and interest overdue (if any) and an explanation thereof;

(F) A list of all leases that were in default or were classified during the year as uncollectible, and the following information with respect to each lease on the list (including a notation as to whether parties involved are known to be parties in interest): the type of property leased (and, if fixed assets such as land, buildings, and leaseholds, then the location of the property); the identity of the lessor or lessee from or to whom the Funds are leasing; the relationship of the lessors and lessees, if any, to the Funds, the government of the District of Columbia, any employee organization, or any other party in interest; the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; the date the leased property was purchased and its cost; the date the property was leased and its approximate value at that date; the gross rental receipts during the reporting period; expenses paid for the leased property during the reporting period; the net receipts from the lease; the amounts in arrears; and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

(G) The most recent annual statement of assets and liabilities of any common or collective trust maintained by a bank or similar institution in which some or all the assets of the Funds are held, of any separate account maintained by an insurance carrier in which some or all of the assets of the Funds are held, and of any separate trust maintained by a bank as trustee in which some or all of the assets of the Funds are held, and for each separate account or a separate trust, such other information as may be required by the Retirement Board to comply with this subsection; and

(H) A schedule of each reportable transaction, the name of each party to the transaction (except that, for an acquisition or sale of a security on the market, the report need not identify the person from whom the security was acquired or to whom it was sold), and a description of each asset to which the transaction applies; the purchase or selling price if a sale or purchase, the rental rate if a lease, or the interest rate and maturity date if a loan; expenses incurred in connection with the transaction; and the cost of the asset, the current value of the asset, and the net gain or loss on each transaction.

(3) For purposes of paragraph (2)(H) of this subsection, the term “reportable transaction” means a transaction to which the Funds is a party and which is:

(A) A transaction involving an amount in excess of 5% (or other percentage that may be established from time to time by the United State Department of Labor for “reportable transactions”) of the current value of the assets of the Funds;

(B) Any transaction (other than a transaction respecting a security) that is part of a series of transactions with or in conjunction with a person in a fiscal year, if the aggregate amount of the transactions exceeds 5% (or other percentage that may be established from time to time by the United States

Department of Labor for reportable transactions) of the current value of the assets of the Funds;

(C) A transaction that is part of a series of transactions respecting one or more securities of the same issuer, if the aggregate amount of the transactions in the fiscal year exceeds 5% (or other percentage that may be established from time to time by the United States Department of Labor for reportable transactions) of the current value of the assets of the Funds; or

(D) A transaction with, or in conjunction with, a person respecting a security, if any other transaction with or in conjunction with the person in the fiscal year respecting a security is required to be reported by reason of subparagraph (A) of this paragraph.

(Sept. 18, 1998, D.C. Law 12-152, § 116, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-782.6.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

Subchapter III. Establishment of Replacement Retirement and Disability Benefits Plans.

§ 1-905.01. Replacement program for covered District employees.

The replacement plan governing retirement and disability for service and benefits accrued after June 30, 1997, for covered District employees shall be the retirement program in effect for covered District employees as of June 30, 1997.

(Sept. 18, 1998, D.C. Law 12-152, § 121, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-783.1.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-905.02. Eligibility and benefits determinations.

Eligibility and the calculation of the amount of the benefit payment for covered District employees for service accrued after June 30, 1997, shall be determined in accordance with the retirement program applicable to covered District employees in effect as of June 30, 1997 (except as otherwise amended by Title XI of the Balanced Budget Act of 1997, approved August 5, 1997 (P.L. 105-33; 111 Stat. 963)).

(Sept. 18, 1998, D.C. Law 12-152, § 122, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-783.2.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-905.03. Tax treatment of plan.

The replacement plan described in § 1-905.01 shall be deemed a “governmental plan” as defined in § 414(d) of the Internal Revenue Code of 1954, approved September 2, 1974 (88 Stat. 926; 26 U.S.C. § 414(d)), and all benefits provided therefrom shall be deemed governmental plan benefits maintained by the District of Columbia.

(Sept. 18, 1998, D.C. Law 12-152, § 123, 45 DCR 4045; Oct. 20, 1999, D.C. Law 13-38, § 1002, 46 DCR 6373.)

Prior Codifications. — 1981 Ed., § 1-783.3.

Effect of amendments. — D.C. Law 13-38 substituted “§ 1-783.1” for “§ 1-783.2”.

Emergency legislation. — For temporary (90-day) amendment of section, see § 1002 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Legislative history of Law 13-38. — For Law 13-38, see notes following § 1-711.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

Subchapter IV. Financing of Retirement Benefits.

§ 1-907.01. Limitation on investment of retirement funds.

(a) Except as provided in subsection (c) of this section, the assets of the Funds may not be invested in the following:

(1) Interest-bearing bonds, notes, bills, or certificates of indebtedness of the government of the District of Columbia, the government of the Commonwealth of Virginia, or the government of the State of Maryland, or the government of any political subdivision thereof, or of any entity subject to control by any such government or any combination of any such governments;

(2) Obligations fully guaranteed as to the payment of both principal and interest by the government of the District of Columbia, the government of the Commonwealth of Virginia, or the government of the State of Maryland, or the government of any political subdivision thereof, or of any entity subject to control by any such government or any combination of any such governments;

(3) Real property in the District of Columbia, Virginia, or Maryland; or

(4) Loans, mortgages, bonds, notes, bills, or certificates of indebtedness secured, in whole or in part, by real property in the District of Columbia, Virginia, or Maryland.

(b)(1) Any assets of the Funds invested after March 16, 1993, in stocks, securities, or other obligations of any institution or company doing business in or with Northern Ireland or with agencies or instrumentalities of Northern Ireland shall be invested to reflect advances to eliminate discrimination made

by these institutions and companies pursuant to paragraph (2) of this subsection.

(2) The Mayor shall consider the following criteria, referred to as the MacBride Principles, to determine the advances to eliminate discrimination made by companies and institutions doing business in or with Northern Ireland or with agencies or instrumentalities of Northern Ireland:

(A) Increasing the representation of individuals from under-represented religious groups in the work force, including managerial, supervisory, administrative, clerical, and technical jobs;

(B) Providing adequate security for the protection of minority employees both at the work place and while traveling to and from work;

(C) Banning provocative religious or political emblems from the work place;

(D) Publicly advertising all job openings and making special recruitment efforts to attract applicants from under-represented religious groups;

(E) Providing that layoff, recall, and termination procedures should not in practice favor particular religious groups;

(F) Abolishing job reservations, apprenticeship restrictions, and differential employment criteria that discriminate on the basis of religion or ethnic origin;

(G) Developing training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees;

(H) Establishing procedures to assess, identify, and actively recruit minority employees with potential for further advancement; and

(I) Appointing senior management staff members to oversee affirmative action efforts and the setting up of timetables to carry out affirmative action principles.

(3)(A) On or before the 1st day of October of each year, the Mayor shall determine the existence of affirmative action taken by all institutions and companies doing business in or with Northern Ireland, in which funds are or will be invested (in conformance with the MacBride Principles as enumerated in paragraph (2) of this subsection), and provide an annual report of his findings for presentation to the Council, which report shall be made available for public inspection.

(B) In making the determination pursuant to subparagraph (A) of this paragraph, the Mayor may rely on reference sources, such as the Investor Responsibility Research Center, in making a determination with respect to the affirmative action taken by the institutions and companies.

(c) The limitations on investments under subsection (a) of this section shall not apply to any of the following investments; provided, that the Board has no discretionary authority for investment decisions in specific geographical regions or political subdivisions, and further provided, that not more than 25% of the interests in pooled or commingled real estate investment vehicles is held by the Fund in:

(1) Pooled or commingled real estate investment vehicles;

(2) Publicly-traded real estate investment trusts and real estate operating companies; or

(3) Pooled or commingled real estate investment vehicles holding pass-through securities that contain mortgages, loans, bonds, notes and other similar instruments issued by private institutions, and that are guaranteed by the federal government or any of its agencies or government-sponsored enterprises.

(Sept. 18, 1998, D.C. Law 12-152, § 131, 45 DCR 4045; Apr. 8, 2005, D.C. Law 15-300, § 3, 52 DCR 1504.)

Prior Codifications. — 1981 Ed., § 1-784.1.

Effect of amendments. — D.C. Law 15-300, in subsec. (a), rewrite the lead-in sentence which had read: "The assets of the Funds shall not be invested in the following:"; and added subsec. (c).

Legislative history of Law 12-152. — For

legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Legislative history of Law 15-300. — For Law 15-300, see notes following § 1-702.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-907.02. District of Columbia payment to the Funds.

(a) Each fiscal year, the District shall insure that a sufficient amount is appropriated for each separate fund comprising the Funds, as the District of Columbia payment to the appropriate separate fund comprising the Funds, which shall be equal to, or greater than, the amount calculated as provided for in § 1-907.03, as determined by the enrolled actuary, engaged pursuant to § 1-907.03(a).

(b) The amount appropriated as the District of Columbia payment shall be deposited in the appropriate separate fund comprising the Funds not more than 30 days after it is appropriated or 30 days after the beginning of the fiscal year for which it is appropriated, whichever is later.

(c) At the end of each fiscal year, the District shall provide to the enrolled actuary the actual aggregate amount of earnable compensation ("covered payroll") paid to each participant group covered by the Retirement Program. The enrolled actuary shall determine whether the amount appropriated for the applicable fiscal year resulted in an overpayment or a shortfall based upon the actual covered payroll.

(1) If a shortfall exists, the Mayor and the Council shall include within the ensuing budget cycle a line item that requests funding equal to the full amount of shortfall for the appropriate separate fund comprising the Funds.

(2) If an overpayment exists, the Mayor and the Council shall include within the ensuing budget cycle a line item that requests a reduction in the amount appropriated as the District of Columbia payment to the Funds equal to the full amount of the overpayment.

(3) Overpayments or shortfall reductions shall be made in addition to, and notwithstanding, any other payment required herein.

(d) If at any time the balance of any separate fund comprising the Funds is not sufficient to meet all obligations against the Funds, the Funds shall have

claims on the revenues of the District of Columbia to the extent necessary to meet the obligation.

(Sept. 18, 1998, D.C. Law 12-152, § 132, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-784.2.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-907.03. Calculation of District of Columbia payment to the Funds.

(a)(1) The Retirement Board shall engage an enrolled actuary who may be the enrolled actuary engaged pursuant to § 1-732(a)(4)(A), who shall, in accordance with generally accepted actuarial principles and practices, make the following determinations with respect to each separate fund comprising the Funds:

(A) When specified in paragraph (2) of this subsection, the actuary shall determine the level percentage of covered payroll, expressed as a percentage (hereinafter in this chapter referred to as the “normal contribution rate”), which shall be the percentage which if paid annually into the Funds from the date of the actuarial determination until the date of death, retirement, or other withdrawal from employment for all participants covered by the retirement program and added to (i) all future employee contributions to the Funds, (ii) the assets in the Funds, and (iii) projected future investment earnings of the Funds, are projected to be sufficient to pay for the future benefits payable from the Funds to that group. If deemed appropriate by the Retirement Board, separate normal contribution rates may be determined for different classifications of employees.

(B) When specified in paragraph (2) of this subsection, the enrolled actuary shall determine the current value of the assets in the Funds as of the actuarial determination date.

(C) The actuary shall also determine such additional information as the Retirement Board may require to make the determinations specified in paragraph (4) of this subsection and in subsection (b) of this section.

(2) Unless the actuary engaged by the Retirement Board pursuant to paragraph (1) of this subsection determines that a more frequent valuation is necessary to support the actuary's opinion, the actuary shall make the determinations described in paragraph (1)(A) and (B) of this subsection:

(A) Not later than 60 days after September 18, 1998; and

(B) Upon a request by the Retirement Board; or

(C) At least once every 2 years.

(3) On the basis of the most recent determinations made under paragraph (1) of this subsection, the enrolled actuary shall certify to the Retirement Board each year, at a time specified by the Retirement Board, the following information with respect to each separate fund comprising the Funds for the next fiscal year:

(A) The normal contribution rate;

(B) The present value of future benefits payable from the Funds for covered employees as of the valuation date;

(C) The current value of assets in the Funds as of the actuarial determination date; and

(D) The value of assets, as determined by the actuary, for use in development of the normal contribution rate.

(4) On the basis of the most recent certification submitted by the enrolled actuary under paragraph (3) of this subsection, the Retirement Board shall certify the normal contribution rate applicable for the next fiscal year for each separate fund comprising the Funds.

(b)(1) On the basis of the most recent determinations made under subsection (a)(4) of this section, the Retirement Board shall, not less than 30 days prior to the date on which the Mayor is required to submit the annual budget for the government of the District of Columbia to the Council, pursuant to § 1-204.42, certify to the Mayor and the Council the normal contribution rate for each separate fund comprising the Funds.

(2) The Mayor, in preparing each annual budget for the District of Columbia pursuant to § 1-204.42, and the Council, in adopting each annual budget in accordance with § 1-204.46 shall, for each separate fund comprising the Funds, include in the budget not less than the product of: (A) the normal contribution rate certified by the Retirement Board under paragraph (1) of this subsection; and (B) an estimate of the applicable payroll, as determined by the Mayor, as the estimate of the District payment for the next fiscal year. The Mayor and the Council may comment and make recommendations concerning any such amount certified by the Retirement Board.

(c) Prior to the enactment of any law, resolution, regulation, rule, or agreement producing any change in benefits under the Retirement Program, the Mayor shall engage, and pay for, an enrolled actuary, who may be the enrolled actuary engaged pursuant to § 1-732(a)(4)(A), to estimate the effect of that change in benefits over the next 5 fiscal years on:

(1) the normal contribution rate; and

(2) the estimated level of District payments; provided that whenever any change in benefits under a retirement program is made to either, but not both, the Metropolitan Police Department or the Fire and Emergency Medical Services Department, the Mayor shall engage an enrolled actuary to perform the same study contemporaneously for the other employee group for which the change was not made.

(d) The Mayor shall transmit the estimates of the actuary to the Retirement Board, the Secretary of the Treasury, and the Council, and during a control year, as defined in § 47-393(4) to the District of Columbia Financial Responsibility and Management Assistance Authority. In no event may such change in benefits go into effect until the end of the 30-day period beginning on the date the transmittals required herein have been completed.

(Sept. 18, 1998, D.C. Law 12-152, § 133, 45 DCR 4045; Oct. 1, 2002, D.C. Law 14-190, § 3742, 49 DCR 6968; Apr. 13, 2005, D.C. Law 15-354, § 4(b), 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 1-784.3.

Effect of amendments. — D.C. Law 14-190 rewrote subsec. (c)(2) which had read as follows: “(2) the estimated level of District payments.”

D.C. Law 15-354, in subsec. (c), substituted “Prior to the enactment of any law, resolution, regulation, rule, or agreement” for “Prior to the enactment of any law”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3642 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 1062 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section, see § 1063 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 1062 of Fiscal Year 2013 Budget

Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

For temporary (90 day) addition of section, see § 1063 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 1-523.01.

Short title. — Short title of subtitle D of title XXXVII of Law 14-190: Section 3741 of D.C. Law 14-190 provided that subtitle D of title XXXVII of the act may be cited as the Retirement Reform Replacement Actuarial Engagement Amendment Act of 2002.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-907.04. Actuarial statement and opinion.

(a) As a part of the actuarial report presented to the Retirement Board, the actuary shall prepare an actuarial statement. The statement shall contain:

- (1) The dates of the fiscal year and the most recent actuarial valuation;
- (2) The total amount of the contributions made by participants and the total amount of all other contributions, including the District payment, received for the fiscal year and for each preceding fiscal year for which the information was not previously reported;

(3) The number of participants, whether or not retired, and beneficiaries receiving benefits covered as of the last day of the fiscal year;

(4) The following information as of the date of the most recent actuarial valuation and, if available and sufficiently comparable so as not to be misleading, for at least the 2 preceding actuarial valuations:

(A) The aggregate annual compensation of participants;

(B) The actuarial value of assets of each separate fund comprising the Funds;

(C) The actuarial accrued liability, if applicable;

(D) The difference between the actuarial value of assets of the system and actuarial accrued liability, if applicable;

(E) The actuarial value of assets of the system expressed as a percentage of actuarial accrued liability, if applicable;

(F) The difference between the actuarial liability expressed as a percentage of the aggregate annual compensation of participants, if applicable; and

(G) The actuarial assumptions and methods used in determining the information described in this paragraph and other factors that significantly affect the information described in this paragraph; and

(5) Other information necessary to disclose fully and fairly the actuarial condition of the retirement plans.

(b)(1) The actuarial report shall also contain an opinion of the enrolled actuary on the actuarial statement attesting that:

(A) To the best of the actuary's knowledge the statement is complete and accurate;

(B) Each assumption and method used in preparing the statement is reasonable, and the assumptions and methods in the aggregate are reasonable, taking into account the experience of the retirement system; and

(C) The assumptions and methods in combination offer the actuary's best estimate of anticipated experience.

(2) In formulating an opinion, the actuary may rely on the correctness of any accounting matter as to which any qualified public accountant has expressed an opinion, if the actuary so indicates.

(c) The actuarial statement and opinion required herein shall be included as part of the annual report required pursuant to § 1-909.02.

(Sept. 18, 1998, D.C. Law 12-152, § 134, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-784.4.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-907.05. Information about retirement programs.

Upon a request of the Retirement Board, the Mayor, the Chief Financial Officer, the Chairman of the District of Columbia Public Charter School Board, the President of the Board of Education, or their successors, shall furnish to the Retirement Board information with respect to retirement programs and post employment benefit programs to which this chapter applies as the Retirement Board considers necessary to enable it to carry out its responsibilities under this chapter and to enable the enrolled actuary engaged pursuant to § 1-907.03(a) to carry out the responsibilities of the enrolled actuary under this chapter.

(Sept. 18, 1998, D.C. Law 12-152, § 135, 45 DCR 4045; Dec. 7, 2004, D.C. Law 15-205, § 1013(b), 51 DCR 8441.)

Prior Codifications. — 1981 Ed., § 1-784.5.

Effect of amendments. — D.C. Law 15-205 substituted "the Mayor, the Chief Financial Officer, the Chairman of the District of Columbia Public Charter School Board, the President of the Board of Education, or their successors, shall furnish to the Retirement Board information with respect to retirement programs and post employment benefit programs" for "the Mayor shall furnish to the Retirement Board

information with respect to retirement programs".

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 1-702.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

For conditional applicability of subtitle B of Title I of D.C. Law 15-205, see notes under § 1-911.04a.

Subchapter V. Reporting and Disclosure Requirements; Bonding.

§ 1-909.01. Personal financial disclosure by the Retirement Board.

(a)(1) Effective October 1, 1997, each member of the Retirement Board shall, within 90 days of his election or appointment, as the case may be, and not later than April 30th of each year thereafter, submit, as a member of the Retirement Board, to the Mayor and the Council a personal financial disclosure statement with respect to the preceding calendar year.

(2) The statement shall be in such form as the Council may require and shall contain information with respect to the member's financial condition as the Council may require, including the following information:

(A) The amount and source of all income (as defined in § 61 of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 17; 26 U.S.C. § 61)) received during the year;

(B) The identity and category of value of each liability owned, directly or indirectly, that exceeds \$2,500 as of the last day of the year (excluding any mortgage that secures real property that is the principal residence of the member);

(C) The identity and category of value of any property held, directly or indirectly, in a trade or business or for investment or the production of income that has a fair market value of not less than \$1,000 as of the last day of the year;

(D) The identity and category of value of any transaction, whether direct or indirect, in securities or commodities futures during the year in excess of \$1,000 (excluding any gift to any tax-exempt organization described in § 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3))), and the identity, date, and category of value of any purchase or sale, whether direct or indirect, of any interest in real or tangible personal property during the year the value of which exceeds \$1,000 at the time of the purchase or sale (excluding any purchase or sale of any property that is the principal residence of the member or that is used as furnishings for the principal residence);

(E) The nature and extent of any interest during the year in any bank, insurance company, or other financial institution, or in any brokerage or other securities or investment company; and

(F) The nature and extent of any employment during the year by any bank, insurance company, or other financial institution, or by any brokerage or other securities or investment company.

(b) For purposes of subsection (a)(2)(B), (C), and (D) of this section, the member reporting need not specify the actual amount or value of each item

required to be reported under that subsection, but shall indicate which of the following categories the amount or value is within:

- (1) Not more than \$5,000;
- (2) Greater than \$5,000, but not more than \$15,000;
- (3) Greater than \$15,000, but not more than \$50,000;
- (4) Greater than \$50,000, but not more than \$100,000; or
- (5) Greater than \$100,000.

(c) Consistent with § 1-909.05, the information required by this section shall be public information.

(Sept. 18, 1998, D.C. Law 12-152, § 141, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-785.1.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-909.02. Annual report.

(a) The Retirement Board shall publish an annual report for each fiscal year with respect to each retirement program and separate fund comprising the Funds to which this chapter applies. The report shall be filed with the Mayor and the Council in accordance with subsection (c) of this section and shall be made available and furnished to participants and beneficiaries in accordance with § 1-909.04(c).

(b) The annual report shall include the following information:

- (1) The name and business address of each Retirement Board member;
- (2) The name and business address of the agent for service of process;
- (3) The name and business address of each fiduciary;
- (4) The name of each person or entity (including any consultant, broker, trustee, accountant, insurance carrier, actuary, investment counsel, or custodial trustee), who received compensation from the Retirement Board during the preceding year for services rendered to the Retirement Board or the participants or beneficiaries of the retirement program for which a separate fund comprising the Funds was established, the amount of the compensation, the nature of the services, the relationship of the person or entity, if any, to the District of Columbia government or employee organization, and any other office, position, or employment the person or entity holds with any party in interest;

(5) The description of each of the retirement plans and the number of employees covered by the retirement plans, including any significant change in the retirement program made during the period and the impact of the change on benefits;

(6) The current statement of investment objectives and policies, which shall include:

- (A) The desired rates of return on assets overall;
- (B) The desired rates of return and acceptable levels of risk for each asset class;

(C) Asset allocation goals;
 (D) Guidelines for the delegation of authority to investment managers;
 and

(E) Information on the benchmarks used to evaluate investment performance;

(7) Financial statements and notes to the financial statements in conformity with generally accepted accounting principles;

(8) An opinion on the financial statements by the qualified public accountant, engaged pursuant to § 1-907.03, in conformity with generally accepted auditing standards;

(9) The actuarial statement and opinion required by § 1-907.04;

(10) A description of any material interest, held by any trustee, or employee who is a fiduciary with respect to the investment management of assets of the Funds, or by a related person, in any material transaction with the system within the last 3 years;

(11) A schedule of the rates of return, net of total investment expense, on assets of the system overall and on assets aggregated by category over the most recent 1-year, 3-year, 5-year, and 10-year periods, to the extent available, and the rates of return on appropriate benchmarks for assets of the system overall and for each category over each period; and

(12) A schedule of the sum of total investment expenses and total general administrative expense for the fiscal year expressed as a percentage of the fair market value of assets of the Funds on the last day of the fiscal year.

(c) The annual report shall be filed with the Mayor and the Council within 210 days after the end of the fiscal year for which it is prepared.

(Sept. 18, 1998, D.C. Law 12-152, § 142, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-785.2.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-909.03. Summary plan description.

(a)(1) The Retirement Board shall furnish to participants and beneficiaries a summary plan description of the Retirement Program for service and benefits accrued after June 30, 1997, pursuant to § 1-909.04(b). The summary plan description shall include the information specified in subsection (b) of this section, shall be written in a manner calculated to be understood by the average participant or beneficiary, and shall be sufficiently accurate and comprehensive to reasonably apprise the participants and beneficiaries of their rights and obligations under the Retirement Program.

(2) A summary of any material modification in the terms of the retirement program benefits accrued after June 30, 1997, and any change in the information required under subsection (b) of this section, written in a manner calculated to be understood by the average participant or beneficiary, shall be furnished in accordance with § 1-909.04(b).

(b) Each summary plan description of an individual retirement program shall contain the following information:

(1) The name of the individual retirement program and system and type of administration of the individual retirement program;

(2) The name and address of the Chairman of the Retirement Board, who shall be the agent of the Retirement Board for the service of legal process;

(3) The name, title, and business address of each member of the Retirement Board;

(4) A description of the relevant provisions of applicable collective-bargaining agreements;

(5) Citations to the governing laws of the retirement program;

(6) The individual retirement program's requirements respecting eligibility for participation and benefits;

(7) A description of benefits provided by the program, including the manner of calculating benefits and any benefits provided for spouses and survivors;

(8) The source of financing of the program;

(9) A description of the provisions providing for nonforfeitable pension benefits;

(10) Circumstances which may result in disqualification, ineligibility, or denial or loss of benefits;

(11) The identity of any organization through which benefits are provided;

(12) The procedures to be followed in presenting claims for benefits under the retirement program;

(13) The remedies available under the retirement program for the redress of claims that are denied in whole or in part; and

(14) The location of the Retirement Board's offices and the function of the Retirement Board.

(c) The Retirement Board shall provide copies of the summary plan descriptions to the Mayor, the Council, and the employee organizations representing employees covered by the retirement plans.

(d) Summary plan descriptions for service and benefits accrued prior to July 1, 1997, are under the jurisdiction and control of the United States Secretary of the Treasury pursuant to the Retirement Protection Act.

(Sept. 18, 1998, D.C. Law 12-152, § 143, 45 DCR 4045; Apr. 13, 2005, D.C. Law 15-354, § 4(c), 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 1-785.3.

Effect of amendments. — D.C. Law 15-354, in par. (1) of subsec. (a), substituted "The Retirement Board shall furnish to participants and beneficiaries a summary plan description of the Retirement Program for service and benefits accrued after June 30, 1997" for "summary plan description of the Retirement Program, for service and benefits accrued after June 30, 1997, shall be furnished to partici-

pants and beneficiaries,"; and, in subsec. (c), substituted "The Retirement Board shall provide copies of the summary plan descriptions to" for "Copies of the summary plan descriptions shall be provided to".

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 1-523.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-909.04. Reports and disclosure to participants and beneficiaries.

(a) The Retirement Board shall furnish the Mayor and the Council, upon request, any documents relating to the retirement program or the Funds, including trust agreements, contracts, or other instruments under which the Funds are operated.

(b) A copy of the summary plan description and all modifications and changes referred to in § 1-909.03(a) shall be provided to a participant within 90 days after he becomes a participant, or to a beneficiary within 90 days after he first receives benefits. The Retirement Board shall furnish to each participant, and to each beneficiary receiving benefits under the Retirement Program, every 5th year an updated summary plan description described in § 1-909.03 that integrates all Retirement Program amendments made within the 5-year period, except where no amendments have been made to a retirement program during the 5-year period, this sentence shall not apply. Notwithstanding the foregoing sentence, the Retirement Board shall furnish to each participant, and to each beneficiary receiving benefits under the Retirement Program, the summary plan description described in § 1-909.03 every 10th year. If there is a modification or change described in § 1-909.03(a), a summary plan description of the modification or change shall be furnished to each participant and to each beneficiary who is receiving benefits under the Retirement Program not later than 210 days after the end of the fiscal year in which the change is adopted.

(c) Within 210 days after the close of the fiscal year, the Retirement Board shall furnish to each participant, and to each beneficiary receiving benefits under the Retirement Program, a statement that fairly summarizes the annual report. The statement shall contain a disclosure of the financial and actuarial status of the applicable retirement plan.

(d) The Board shall permit any accountant or actuary retained by the Mayor or the Council to inspect whatever books and records of the Funds as are necessary to conduct the District's annual audit, or if the Mayor or the Council rejects the annual report or the summary plan description upon a finding that the document is incomplete for purposes of this chapter, or upon a determination that there is any material qualification by an accountant or actuary contained in an opinion submitted as part of the annual report.

(e) The Council may require that the Retirement Board furnish to each participant and to each beneficiary receiving benefits under an individual retirement program a statement of the rights of participants and beneficiaries under this chapter.

(Sept. 18, 1998, D.C. Law 12-152, § 144, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-785.4.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see His-

torical and Statutory Notes following § 1-901.01.

152: See Historical and Statutory Notes following § 1-901.01.

Editor's notes. — Application of Law 12-

§ 1-909.05. Disclosure to the public.

(a) The Retirement Board and the Mayor shall make copies of the summary plan descriptions and annual reports available for public inspection in an appropriate location.

(b) The Retirement Board shall make reasonably available to participants for public examination in the Retirement Board's Office, and in other places if necessary, the following information:

(1) The governing law of the retirement program;

(2) Summary descriptions of modifications or changes that have been provided to participants and beneficiaries but not yet integrated into the summary plan description;

(3) The most recent annual disclosure of financial and actuarial status; and

(4) The most recent annual report.

(c) Upon written request by a participant, beneficiary, or member of the public, copies of any publication described in subsection (b) of this section shall be provided. A reasonable fee to cover the cost of providing copies may be charged. Copies shall be provided within 30 days after receiving payment.

(d) Information described in § 1-909.06(a) with respect to a participant or beneficiary of a retirement program may be disclosed only to the extent that information respecting that participant's or beneficiary's benefits under Title II of the Social Security Act, approved August 14, 1935 (49 Stat. 622; 42 U.S.C. § 401 et seq.), may be disclosed under that act.

(e) All meetings of the Retirement Board shall be open to the public, except to the extent that information discussed in any meeting relates to personnel matters the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, or the deliberations or tentative or final decisions on investments or other financial matter would jeopardize the ability of the Retirement Board to implement an investment decision or to achieve investment objectives.

(f) A record of the disclosed deliberations that may occur pursuant to subsection (e) of this section, or a tentative or final decision on investments or other financial matter, shall not be a public record pursuant to subchapter II of Chapter 5 of Title 2, to the extent its disclosure would jeopardize the ability to implement a decision or to achieve investment objectives.

(Sept. 18, 1998, D.C. Law 12-152, § 145, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-785.5.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-909.06. Reporting of participants' benefit rights.

(a) The Retirement Board shall furnish to any participant or beneficiary who so requests in writing a statement indicating, on the basis of the latest available information:

(1) The total benefits accrued; and

(2) The nonforfeitable retirement benefits, if any, that have accrued, or the earliest date on which benefits will become nonforfeitable.

(b) A participant or beneficiary shall not be entitled to receive more than one report under subsection (a) of this section during any 12-month period.

(Sept. 18, 1998, D.C. Law 12-152, § 146, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-785.6.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-909.07. Retention of records.

The Retirement Board shall maintain records on the matters required to be disclosed under this subchapter, which shall provide in sufficient detail the necessary basic information and data from which the required documents may be verified, explained, or clarified, and checked for accuracy and completeness. These records shall include minutes of the meetings of the Retirement Board, vouchers, worksheets, receipts, and applicable resolutions. The Retirement Board shall keep the records available for examination for a period of not less than 6 years after the filing date of the documents based on the information which they contain. Except to the extent that the records involve matters protected from public disclosure under § 1-909.05, all records shall be available for inspection by the public.

(Sept. 18, 1998, D.C. Law 12-152, § 147, 45 DCR 4045; Apr. 12, 2000, D.C. Law 13-91, § 113(a), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-785.7.

Effect of amendments. — D.C. Law 13-91, in the first sentence, substituted "under this subchapter" for "under subchapter IV of this chapter".

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see His-

torical and Statutory Notes following § 1-901.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-809.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-909.08. Criminal penalties.

Whoever willfully violates any provision of any section of this subchapter (other than § 1-909.06), or any regulation or order issued under those provisions, shall be fined not more than \$5,000, or imprisoned not more than one year, or both, except that for a violation by a person not an individual, the person shall be fined not more than \$100,000.

(Sept. 18, 1998, D.C. Law 12-152, § 148, 45 DCR 4045; Apr. 12, 2000, D.C. Law 13-91, § 113(b), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-785.8.

Effect of amendments. — D.C. Law 13-91 substituted “this subchapter (other than § 1-785.6)” for “subchapter IV of this chapter (other than section 136)”.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see His-

torical and Statutory Notes following § 1-901.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-809.01.

Editor’s notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-909.09. Bonding.

(a)(1)(A) Each fiduciary of a separate fund comprising the Funds established by this chapter and each person who handles funds or other property of the Funds (“Funds Official”) shall be bonded as provided in this section, except that no bond shall be required of a fiduciary (or of any director, officer, or employee of the fiduciary) if the fiduciary:

(i) Is a corporation organized and doing business under the laws of the United States or of any state;

(ii) Is authorized under those laws to exercise trust powers or to conduct an insurance business;

(iii) Is subject to supervision or examination by federal or state authority; and

(iv) Has at all times a combined capital and surplus in excess of a minimum amount as may be established by regulations issued by the Council, which amount shall be at least \$1,000,000.

(B) Subparagraph (A)(iv) of this paragraph shall apply to a bank or other financial institution that is authorized to exercise trust powers and the deposits of which are not insured by the Federal Deposit Insurance Corporation only if the bank or institution meets bonding or similar requirements under state law that the Retirement Board determines are at least equivalent to those imposed on banks by federal law.

(2)(A) The amount of the bond shall be the lesser of 10% of the amount of the funds handled by the fiduciary and \$500,000, except that the amount of the bond shall be at least \$1,000.

(B) The Retirement Board, after notice and opportunity for hearing to the fiduciary and all other parties in interest to the Funds, may waive the \$500,000 additional requirement.

(C) The amount of the bond shall be set at the beginning of each fiscal year.

(3) For purposes of fixing the amount of the bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by the bond and by the predecessor or predecessors, if any, during the preceding reporting year, or if the Funds have no preceding reporting year under this chapter, the amount of funds to be handled during the current reporting year by person, group, or class, estimated as provided in regulations to be prescribed by the Retirement Board.

(4) The bond shall provide protection to the Funds against loss by reason

of acts of fraud or dishonesty by the Fund Official, directly or through connivance with others.

(5) Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on federal bonds under authority granted by the Secretary of the Treasury. Any bond shall be in a form or of a type approved by the Retirement Board, including individual bonds or schedule or blanket forms of bonds that cover a group or class.

(b) It shall be unlawful for any Funds official to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any fund without being bonded as required by subsection (a) of this section, and it shall be unlawful for any Funds Official or any other person having authority to direct the performance of those functions or to permit the functions, or any of them, to be performed by any Funds Official with respect to whom the requirements of subsection (a) of this section have not been met.

(c) It shall be unlawful for any person to procure any bond required by subsection (a) of this section from any surety or other company or through any agent or broker in whose business operations the Funds or any party in interest in the Funds has any control or significant financial interest, direct or indirect.

(d) A person who is required to be bonded under subsection (a) of this subsection because he handles property of a separate fund comprising the Funds, shall not be required to obtain additional bonding with regard to the Funds.

(e) The Retirement Board may prescribe such regulations, which shall be subject to Council review, as may be necessary to carry out the provisions of this section.

(Sept. 18, 1998, D.C. Law 12-152, § 149, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-785.9.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

Subchapter VI. Miscellaneous.

§ 1-911.01. Civil enforcement.

(a) A civil action may be brought:

(1) By a participant or beneficiary:

(A) For the relief provided for in subsection (b) of this section; or

(B) To recover benefits due to him under the terms of his retirement program, to enforce his rights under the terms of the retirement program, or to clarify his rights to future benefits under the terms of the Retirement Program;

(2) By a participant or beneficiary, the District of Columbia, or the Retirement Board for appropriate relief under § 1-742; or

(3) By a participant or beneficiary, the District of Columbia, and the Retirement Board:

(A) To enjoin any act or practice that violates any provision of this chapter or the terms of the Retirement Program; or

(B) To obtain other appropriate equitable relief:

(i) To redress any violation; or

(ii) To enforce any provision of this chapter or the terms of an individual retirement program.

(b) If the Retirement Board fails or refuses to comply with a request for any information that the Retirement Board is required by this chapter to furnish to a participant or beneficiary (unless the failure or refusal results from matters reasonably beyond the control of the Board) by mailing the information requested to the last known address of the requesting participant or beneficiary within 30 days after the request, then the Retirement Board may, in the court's discretion, be liable to the participant or beneficiary in an amount of up to \$100 a day from the date of the failure or refusal, and the court may order the Retirement Board to provide the required information and may in its discretion order other relief as it considers proper.

(c) The Retirement Board may sue and be sued under this chapter as an entity. Service of summons, subpoena, or other legal process of a court upon the Chairman of the Retirement Board in that capacity shall constitute service upon the Retirement Board.

(d) In any action under this chapter by a participant, beneficiary, fiduciary, or the Retirement Board, the court in its discretion, may grant reasonable attorneys fees and costs of action to either party.

(Sept. 18, 1998, D.C. Law 12-152, § 201, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-786.1.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-911.02. Limitations on actions.

For fraud or concealment, an action may be commenced under this chapter not later than 6 years after the date of discovery of a breach or violation. Otherwise, no action may be commenced under this chapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this chapter, or with respect to a violation of this chapter, after the earlier of:

(1) Six years after:

(A) The date of the last action that constituted a part of the breach or violation; or

(B) For an omission, the latest date on which the fiduciary could have cured the breach or violation; or

(2) Three years after the earliest date:

(A) On which the plaintiff had actual knowledge of the breach or violation; or

(B) On which a report from which he could reasonably be expected to

have obtained knowledge of the breach or violation was filed with the Mayor or the Council.

(Sept. 18, 1998, D.C. Law 12-152, § 202, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-786.2.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-911.03. Alienation of benefits.

Benefits of the retirement programs provided for herein shall not be assigned or alienated, except to the extent expressly permitted by this chapter or by another applicable law.

(Sept. 18, 1998, D.C. Law 12-152, § 203, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-786.3.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-911.04. Effect on other laws.

(a) The provisions of this chapter supersede any provisions of other law which are inconsistent with this chapter and the regulations thereunder.

(b) Nothing in this chapter shall be deemed to alter or amend in any way the provisions of existing laws relating to the program of annuities, other retirement benefits, or medical benefits for members and officers, retired members and officers, and survivors thereof, of the United States Park Police force, the United States Secret Service, or the United States Secret Service Uniformed Division.

(Sept. 18, 1998, D.C. Law 12-152, § 204, 45 DCR 4045.)

Prior Codifications. — 1981 Ed., § 1-786.4.

Legislative history of Law 12-152. — For legislative history of D.C. Law 12-152, see Historical and Statutory Notes following § 1-901.01.

Editor's notes. — Application of Law 12-152: See Historical and Statutory Notes following § 1-901.01.

§ 1-911.04a. Continuative administration.

(a) Notwithstanding § 1-711(a), the Mayor, the Chief Financial Officer, the District of Columbia Public Charter School Board, and the Board of Education, or their successors, shall continue to discharge their respective duties under the retirement programs until the Retirement Board notifies the Mayor and the Council of the District of Columbia in writing that the Retirement Board is prepared to carry out the duties and responsibilities established under this

chapter; provided, that the notification shall occur no later than 12 months after December 7, 2004.

(b) The Mayor, the Chief Financial Officer, the District of Columbia Public Charter School Board, and the President of the Board of Education, or their successors, shall cooperate with the Retirement Board in developing and periodically updating operating procedures for all District personnel offices providing retirement and survivor benefit services to participants and, if applicable, to individuals eligible for benefits under post employment benefit programs.

(Sept. 18, 1998, D.C. Law 12-152, § 204a, as added Dec. 7, 2004, D.C. Law 15-205, § 1013(c), 51 DCR 8441; Apr. 7, 2006, D.C. Law 16-91, § 125(b)(2), 52 DCR 10637.)

Effect of amendments. — D.C. Law 16-91 validated a previously made technical correction.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 1-702.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Editor's notes. — Conditional applicability of subtitle B of Title I of D.C. Law 15-205: Section 1015 of D.C. Law 15-205 provided:

“This subtitle shall not apply until the enactment by Congress of section 139 of the fiscal year 2005 Budget Request Act, passed on 1st reading on May 14, 2004 (Enrolled version of

Bill 15-765) or until enactment of other Congressional legislation that authorizes the Council of the District of Columbia to transfer authority of the administration of the retirement plans of the District of Columbia, whichever occurs first.”

Section 4(a) of Pub. L. 108-489 provided: “(a) In general. — Section 424(c)(21) of the District of Columbia Home Rule Act (sec. 1-204.24c(21), D.C. Official Code) is amended by striking ‘systems’ and inserting the following: ‘systems (other than the retirement system for police officers, fire fighters, and teachers)’.”

GOVERNMENT ORGANIZATION

CHAPTER 10. ELECTIONS.

Subchapter I. Regulation of Elections

- Sec.
1-1001.01. Election of electors.
1-1001.02. Definitions.
1-1001.03. Board of Elections — Created; composition; term of office; vacancies; reappointment; designation of Chairman.
1-1001.04. Board of Elections — Qualifications; prohibited activities; compensation; removal; time for filling vacancy.
1-1001.05. Board of Elections — Duties.
1-1001.06. Board independent agency; facilities; seal.
1-1001.06a. Establishment of the Election Reform Fund.
1-1001.07. Voter.
1-1001.08. Qualifications of candidates and electors; nomination and election of Delegate, Mayor, Chairman, members of Council, and members of Board of Education; petition requirements; arrangement of ballot.
1-1001.09. Secrecy required; place of voting; watchers; challenged ballots; assistance in marking ballot or operating voting machine; more than 1 vote prohibited; unopposed candidates; availability of regulations at polling place; deposit, inspection, and destruction of ballots.
1-1001.09a. Post-election audits.
1-1001.10. Dates for holding elections; votes cast for President and Vice President counted as votes for presidential electors; voting hours; tie votes; filling vacancy where elected official dies, resigns, or becomes unable to serve.
1-1001.11. Recount; judicial review of election.
1-1001.12. Interference with registration and voting.
1-1001.13. Appropriations.
1-1001.14. Corrupt election practices.
1-1001.15. Candidacy for more than 1 office prohibited; multiple nominations; candidacy of officeholder for another office restricted.
1-1001.16. Initiative and referendum process.
1-1001.17. Recall process.

Subchapter II. Election Wards

- 1-1011.01. Election wards.

Subchapter III. Provisions Relating to 1978 Amendments

- 1-1021.01. Timeliness of action.
1-1021.02. Issuance of rules and regulations.

Sec.

- 1-1021.03. Applicability of § 1-1001.16 to initiative petitions circulated on or after October 1, 1978, and before June 7, 1979.
1-1021.04. Effective date.

Subchapter IV. Multilingual Election Materials

- 1-1031.01. "Non-English speaking person" defined.
1-1031.02. Election materials to be supplied in Non-English language and in English.

Subchapter V. Election Area Boundaries

- 1-1041.01. Establishment of ward task forces on Advisory Neighborhood Commissions.
1-1041.02. Report of ward task forces.
1-1041.03. Adoption of election ward boundaries effective January 1, 2012.
1-1041.04. Residency requirement.

Subchapter VI. National Popular Vote Interstate Agreement

- 1-1051.01. Enactment.

Subchapter VII. Accommodations for Military and Overseas Voters

- 1-1061.01. Short title.
1-1061.02. Definitions.
1-1061.03. Elections covered.
1-1061.04. Role of Board.
1-1061.05. Overseas voter's registration address.
1-1061.06. Methods of registering to vote.
1-1061.07. Methods of applying for military-overseas ballot.
1-1061.08. Timeliness and scope of application for military-overseas ballot.
1-1061.09. Transmission of unvoted ballots.
1-1061.10. Timely casting of ballot.
1-1061.11. Federal write-in absentee ballot.
1-1061.12. Receipt of voted ballot.
1-1061.13. Declaration.
1-1061.14. Confirmation of receipt of application and voted ballot.
1-1061.15. Use of voter's electronic-mail address.
1-1061.16. Publication of election notice.
1-1061.17. Prohibition of nonsubstantive requirements.
1-1061.18. Equitable relief.
1-1061.19. Uniformity of application and construction.
1-1061.20. Relation to Electronic Signatures in Global and National Commerce Act.

*Subchapter I. Regulation of Elections.***§ 1-1001.01. Election of electors.**

In the District of Columbia electors of President and Vice President of the United States, the Delegate to the House of Representatives, the members of the Board of Education, the members of the Council of the District of Columbia, the Attorney General for the District of Columbia, the Mayor and the following officials of political parties in the District of Columbia shall be elected as provided in this subchapter:

- (1) National committeemen and national committeewomen;
- (2) Delegates to conventions and conferences of political parties including delegates to nominate candidates for the Presidency and Vice Presidency of the United States;
- (3) Alternates to the officials referred to in paragraphs (1) and (2) of this section, where permitted by political party rules; and
- (4) Such members and officials of local committees of political parties as may be designated by the duly authorized local committees of such parties for election at large or by ward in the District of Columbia.

(Aug. 12, 1955, 69 Stat. 699, ch. 862, § 1; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1(1); Apr. 22, 1968, 82 Stat. 103, Pub. L. 90-292, § 4(1); Sept. 22, 1970, 84 Stat. 853, Pub. L. 91-405, title II, § 205(e)(1); Dec. 23, 1971, 85 Stat. 788, Pub. L. 92-220, § 1(1); Dec. 24, 1973, 87 Stat. 832, Pub. L. 93-198, title VII, § 751(1); Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 2(a), 29 DCR 458; Oct. 18, 2007, D.C. Law 17-26, § 2(a), 54 DCR 8018; May 27, 2010, D.C. Law 18-160, § 131(a), 57 DCR 3012.)

Cross references. — Advisory neighborhood commissions, elections, authorization, see § 1-309.09.

Board of Elections and Ethics, fines and penalties, advisory opinions, see § 1-1103.05.

Council, elections, terms of office, vacancies, see § 1-204.01.

Elections, "political party" defined, see § 1-1101.01.

House of representatives, delegates, privileges and restrictions, qualifications, see § 1-401.

Statehood constitutional convention initiative, delegates, at-large and ward candidates, see § 1-124.

Section references. — This section is referred to in §§ 1-1001.08 and 1-1001.10.

Prior Codifications. — 1981 Ed., § 1-1301.1973 Ed., § 1-1101.

Effect of amendments. — D.C. Law 17-26, in par. (2), deleted "Provided, that all elections for delegates to conventions and conferences of political parties, upon the request of the said party, shall be scheduled at the same time as primary, general, or special elections already scheduled for other purposes" following "United States".

D.C. Law 18-160, in the introductory language, inserted "the Attorney General for the District of Columbia,".

Legislative history of Law 2-101. — Law 2-101 was introduced in Council and assigned Bill No. 2-218, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 2, 1978 and May 16, 1978, respectively. Signed by the Mayor on June 15, 1978, it was assigned Act No. 2-207 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-88. — Law 4-88, the "District of Columbia Election Code of 1955," was introduced in Council and assigned Bill No. 4-271, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 24, 1981 and December 8, 1981, respectively. Signed by the Mayor on January 20, 1982, it was assigned Act No. 4-142 and transmitted to both Houses of Congress for its review.

Legislative history of Law 17-26. — Law 17-26, the "Election Day Amendment Act of 2007", was introduced in Council and assigned Bill No. 17-169 which was referred to the Com-

mittee on Public Safety and Judiciary. The Bill was adopted on first and second readings on June 5, 2007, and July 10, 2007, respectively. Signed by the Mayor on July 25, 2007, it was assigned Act No. 17-88 and transmitted to both Houses of Congress for its review. D.C. Law 17-26 became effective on October 18, 2007.

Legislative history of Law 18-160. — Law 18-160, the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, was introduced in Council and assigned Bill No. 18-5, which was referred to the Committee on Public Safety and the Judiciary. The bill was adopted on first and second readings on January 5, 2010, and February 2, 2010, respectively. Deemed approved without the signature of the Mayor on March 30, 2010, it was assigned Act No. 18-351 and transmitted to both Houses of Congress for its review. D.C. Law 18-160 became effective on May 27, 2010.

Legislative history of Law 18-160. — D.C.

Law 18-160 contained an applicability clause for section 201 of the Act that, after amendment by emergency Act 18-443, temporary Law 18-224, and emergency Act 19-51, stated that section 201 would become law upon its ratification by a majority of the registered qualified electors of the District of Columbia voting in a referendum and 35 days of congressional review. Section 132 of the Act made section 131 applicable on the same date that section 201 became effective.

Legislative history of Law 18-160. — D.C. Law 18-160 became effective on May 27, 2010. Section 201 of D.C. Law 18-160 was ratified by the electors of the District of Columbia in a general election held on November 2, 2010, and certified by the District of Columbia Board of Elections and Ethics on November 29, 2010. Section 201, and consequently section 131, became effective as law on May 30, 2011, following 35 days of congressional review.

§ 1-1001.02. Definitions.

For the purposes of this subchapter:

- (1) The term “District” means the District of Columbia.
- (2) The term “qualified elector” means a person who:
 - (A) Is at least 17 years of age and who will be 18 years of age on or before the next general election;
 - (B) Is a citizen of the United States;
 - (C) Has maintained a residence in the District for at least 30 days preceding the next election and does not claim voting residence or right to vote in any state or territory;
 - (D) Is not incarcerated for a crime that is a felony in the District; and
 - (E) Has not been found by a court of law to be legally incompetent to vote.
- (3) The term “Board” means the District of Columbia Board of Elections provided for by § 1-1001.03.
- (4) The term “ward” means an election ward established by the Council.
- (5) The term “Board of Education” means the Board of Education of the District.
- (6) The term “Delegate” means the Delegate to the House of Representatives from the District of Columbia.
- (7) The term “felony” includes any crime committed in the District of Columbia referred to in §§ 1-1162.32 and 1-1163.35.
- (8) The term “Council” or “Council of the District of Columbia” means the Council of the District of Columbia established pursuant to the District of Columbia Home Rule Act [§ 1-201.01 et seq.].
- (9) The term “Mayor” means the Office of Mayor of the District of Columbia established pursuant to the District of Columbia Home Rule Act [§ 1-202.01 et seq.].
- (9A) The term “Attorney General” or “Attorney General for the District of

Columbia” means the Attorney General for the District of Columbia provided for by part D-i of subchapter I of Chapter 3 [§ 1-301.81 et seq.] and § 1-204.35.

(10) The term “initiative” means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.

(11) The term “referendum” means the process by which the registered qualified electors of the District of Columbia may suspend acts, or some part or parts of acts, of the Council of the District of Columbia (except emergency acts, acts levying taxes, or acts appropriating funds for the general operating budget) until such acts or part or parts of acts have been presented to the registered qualified electors of the District of Columbia for their approval or rejection.

(12) The term “recall” means the process by which the registered qualified electors of the District of Columbia may call for the holding of an election to remove or retain an elected official of the District of Columbia (except the Delegate to Congress for the District of Columbia) prior to the expiration of his or her term.

(13) The term “elected official” means the Mayor, the Chairman and members of the Council, the Attorney General, the President and members of the Board of Education, the Delegate to Congress for the District of Columbia, United States Senator and Representative, and advisory neighborhood commissioners of the District of Columbia.

(14) The term “printed” shall include any document produced by letterpress, offset press, photo reproduction, multilith, or other mass reproduction means.

(15) The term “proposer” means one or more of the registered qualified electors of the District of Columbia, including any entity, the primary purpose of which is the success or defeat of a political party or principle, or any question submitted to vote at a public election by means of an initiative, referendum or recall as authorized in amendments numbered 1 and 2 to Title IV of the Home Rule Act (§§ 1-204.101 to 1-204.115). Such entities shall be treated as a political committee as defined in § 1-1161.01(44) for the purposes of this subchapter.

(16)(A) The term “residence,” for purposes of voting, means the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which the person’s habitation is fixed and to which a person, whenever he or she is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of the absence.

(B) In determining what is a principal or primary place of abode of a person the following circumstances relating to the person may be taken into account:

- (i) Business pursuits;
- (ii) Employment;
- (iii) Income sources;
- (iv) Residence for income or other tax purposes;

- (v) Residence of parents, spouse, and children;
- (vi) Leaseholds;
- (vii) Situs of personal and real property; and
- (viii) Motor vehicle registration.

(C) A qualified elector who has left his or her home and gone into another state or territory for a temporary purpose only shall not be considered to have lost his or her residence in the District.

(D) If a qualified elector moves to another state or territory with the intention of making it his or her permanent home, he or she shall notify the Board, in writing, and shall be considered to have lost residence in the District.

(E) No person shall be deemed to have gained or lost a residence by reason of absence while employed in the service of the District or the United States governments, while a student at any institution of learning, while kept at any institution at public expense, or while absent from the District with the intent to have the District remain his or her residence. If a person is absent from the District, but intends to maintain residence in the District for voting purposes, he or she shall not register to vote in any other state or territory during his or her absence.

(17) The term “voter registration agency” means an office designated under § 1-1001.07(d)(1) and the National Voter Registration Act of 1993 to perform voter registration activities.

(18) The term “application distribution agency” means an agency designated under § 1-1001.07(d)(14) in whose office or offices mail voter registration applications are made available for general distribution to the public.

(19) The term “duly registered voter” means a registered voter who resides at the address listed on the Board’s records.

(20) The term “registered qualified elector” means a registered voter who resides at the address listed on the Board’s records.

(21) The term “qualified registered elector” means a registered voter who resides at the address listed on the Board’s records.

(22) The term “voting system” means:

(A) The combination of mechanical, electromechanical, or electronic equipment, including the software, firmware, and documentation required to program, control, and support the equipment used to:

- (i) Define ballots;
- (ii) Cast and count votes;
- (iii) Report or display elections results; and
- (iv) Maintain and produce a permanent record; and

(B) The practices and documentation used to:

- (i) Identify system components and versions of components;
- (ii) Test the system during its development and maintenance;
- (iii) Maintain records of system errors and defects;
- (iv) Determine necessary system changes after the initial qualification of the system; and

(v) Provide voters with notices, instructions, forms, paper ballots, or other materials.

(23) The term “Help America Vote Act of 2002” means the Help America

Vote Act of 2002, approved October 29, 2002 (116 Stat. 1666; 42 U.S.C. § 15301 et seq.).

(24) The term “gender identity or expression” shall have the same meaning as provided in § 2-1401.02(12A).

(25) “Election observers” means persons who witness the administration of elections, including individuals representing nonpartisan domestic and international organizations, including voting rights organizations, civil rights organizations, and civic organizations.

(Aug. 12, 1955, 69 Stat. 699, ch. 862, § 2; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 1(26); Apr. 22, 1968, 82 Stat. 103, Pub. L. 90-292, § 4(2); Sept. 22, 1970, 84 Stat. 849, Pub. L. 91-405, title II, §§ 203(a), 205(a); Dec. 23, 1971, 85 Stat. 788, Pub. L. 92-220, § 1(2)-(4); Aug. 14, 1973, 87 Stat. 311, Pub. L. 93-92, § 1(1); Dec. 24, 1973, 87 Stat. 832, Pub. L. 93-198, title VII, § 751(2); Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Sept. 2, 1976, D.C. Law 1-79, title I, § 102(1), title VI, § 602, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 301(a), (b), 24 DCR 2372; June 7, 1979, D.C. Law 3-1, § 2(a), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 2(b), 29 DCR 458; Aug. 2, 1983, D.C. Law 5-17, § 5(a), 30 DCR 3196; Sept. 22, 1994, D.C. Law 10-173, § 2(a), 41 DCR 5154; July 25, 1995, D.C. Law 11-30, § 2(a), 42 DCR 1547; Apr. 12, 2000, D.C. Law 13-91, § 123(a), 47 DCR 520; Dec. 7, 2004, D.C. Law 15-218, § 2(a), 51 DCR 9132; June 25, 2008, D.C. Law 17-177, § 4(a), 55 DCR 3696; Feb. 4, 2010, D.C. Law 18-103, § 2(a), 56 DCR 9169; May 27, 2010, D.C. Law 18-160, § 131(b), 57 DCR 3012; Apr. 27, 2012, D.C. Law 19-124, § 501(g)(1), 59 DCR 1862.)

Cross references. — Advisory Neighborhood Commissions, “registered qualified elector” defined, see § 1-309.09.

Delegate to the House of Representatives, qualifications, see § 1-401.

Section references. — This section is referred to in §§ 1-301.83, 1-1001.07, and 38-2651.

Prior Codifications. — 1981 Ed., § 1-1302. 1973 Ed., § 1-1102.

Effect of amendments. — D.C. Law 13-91, in par. (13), inserted “United States Senator and Representative,”.

D.C. Law 15-218 added pars. (22) and (23).

D.C. Law 17-177 added par. (24).

D.C. Law 18-103 rewrote pars. (2) and (7); and added par. (25).

D.C. Law 18-160 added par. (9A); and, in par. (13), inserted “the Attorney General,”.

D.C. Law 19-124, in par. (3), substituted “Board of Elections” for “Board of Elections and Ethics”; in par. (7), substituted “§ 1-1162.32 and 1-1163.35” for “§ 1-1105.07 or § 1-1107.01”; and, in par. (15), substituted “§ 1-1161.01(44) for purposes of this subchapter” for “§ 1-1101.01 for purposes of this subchapter”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Help America Vote Temporary

Amendment Act of 2004 (D.C. Law 15-120, March 30, 2004, law notification 51 DCR 3807).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Help America Vote Emergency Amendment Act of 2003 (D.C. Act 15-283, December 18, 2003, 51 DCR 197).

For temporary (90 day) amendment of section, see § 2(a) of Help America Vote Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-405, March 18, 2004, 51 DCR 3650).

For temporary (90 day) amendment of section, see § 2(a) of Help America Vote Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-658, December 29, 2004, 52 DCR 492).

For temporary (90 day) amendment of section, see § 2(a) of Omnibus Election Reform Emergency Amendment Act of 2009 (D.C. Act 18-236, November 30, 2009, 56 DCR 9154).

For temporary (90 day) amendment of section, see § 401(g)(1) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-79. — Law 1-79 was introduced in Council and assigned

Bill No. 1-120, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 3, 1976 and May 18, 1976, respectively. Signed by the Mayor on June 18, 1976, it was assigned Act No. 1-131 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-126. — Law 1-126 was introduced in Council and assigned Bill No. 1-364, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 22, 1976 and December 7, 1976, respectively. Enacted without signature by the Mayor on January 25, 1977, it was assigned Act No. 1-225 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-1. — Law 3-1 was introduced in Council and assigned Bill No. 3-2, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 13, 1979 and March 27, 1979, respectively. Signed by the Mayor on April 10, 1979, it was assigned Act No. 3-18 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 5-17. — Law 5-17 was introduced in Council and assigned Bill No. 5-11, which was referred to the Committee on Government Operations. The Bill was adopted on first, amended first and second readings on April 26, 1983, May 10, 1983 and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-34 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-173. — Law 10-173, the "National Voter Registration Act Conforming Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-572, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on 10-293, it was assigned Act No. 10-293 and transmitted to both Houses of Congress for its review. D.C. Law 10-173 became effective on September 22, 1994.

Legislative history of Law 11-30. — Law 11-30, the "Technical Amendments Act of 1995," was introduced in Council and assigned Bill

No. 11-58, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 7, 1995, and March 7, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-32 and transmitted to both Houses of Congress for its review. D.C. Law 11-30 became effective on July 25, 1995.

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Legislative history of Law 15-218. — Law 15-218, the "Help America Vote Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-610, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 29, 2004, and July 13, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-523 and transmitted to both Houses of Congress for its review. D.C. Law 15-218 became effective on December 7, 2004.

Legislative history of Law 17-177. — For Law 17-177, see notes following § 1-309.01.

Legislative history of Law 18-103. — Law 18-103, the "Omnibus Election Reform Amendment Act of 2009", was introduced in Council and assigned Bill No. 18-345, which was referred to the Committee on Government Operations and the Environment. The bill was adopted on first and second readings on October 6, 2009, and November 3, 2009, respectively. Signed by the Mayor on November 30, 2009, it was assigned Act No. 18-238 and transmitted to both Houses of Congress for its review. D.C. Law 18-103 became effective on February 4, 2010.

Legislative history of Law 18-160. — For history of Law 18-160 and applicability, see notes under § 1-1001.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

References in text. — The National Voter Registration Act, referred to in (17), is classified at Pub. L. 103-31, May 20, 1993, 107 Stat. 77.

CASE NOTES

ANALYSIS

Ambiguity.
Initiative.
Residence.

Ambiguity.

Although provision of District of Columbia Charter Amendments Act creating initiative right and signed by mayor was ambiguous on

its face as to signatory requirement of “five (5) percent of the registered electors in five (5) or more of the City’s wards,” legislative history revealed clear legislative intent to mean “in each of” five or more wards, and legislation signed by mayor was thus valid. D.C. Code 1981, § 1-282(a). *Stevenson v. District of Columbia Bd. of Elections & Ethics*, 683 A.2d 1371, 1996 D.C. App. LEXIS 201 (1996).

Initiative.

Proposed District of Columbia initiative, substantive effect of which would be to amend general capital construction statute removing authorization for convention center and also to repeal law providing for its operation did not address merely administrative concerns or impermissibly interfere with execution of existing law and thus was “legislative” in both its substantive and final aspects and did not violate rule that initiative cannot extend to administrative matters. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1973, § 9-220(a); D.C. Code 1980 Supp. § 1-181(b). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Exception to District of Columbia initiative right for “laws appropriating funds” bars any initiative that would halt a project to the extent funds have been requested or appropriated, but leaves within scope of initiative right the power to stop project as of end of fiscal period for which funds have been requested or appropriated, and thus “laws appropriating funds” exception prevents electorate from using initiative to adopt budget request act or make some other affirmative effort to appropriate or to block expenditure of appropriated funds. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Exception to District of Columbia initiative right for “laws appropriating funds” does not preclude initiatives that establish substantive authorization for new project, that repeal existing substantive authorization for program without rescinding its current funding, or that prohibit future budget requests. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Proposed initiative, which sought to bar construction and operation of convention center, and which represented effort through both substantive and fiscal means to reverse legislative

policy determination that District of Columbia should build and operate convention center, proposed a “law” within meaning of District of Columbia charter amendments relating to initiative proposals. D.C. Code 1980 Supp. § 1-181(a). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Residence.

Under District of Columbia law, person’s residency does not change by virtue of being incarcerated in another state. *Hester v. District of Columbia*, 433 F.Supp.2d 71, 2006 U.S. Dist. LEXIS 27161 (2006), reversed by, remanded by 505 F.3d 1283, 378 U.S. App. D.C. 272, 2007 U.S. App. LEXIS 24415 (2007).

Learning disabled student who resided in District of Columbia did not lose his D.C. residence by virtue of being incarcerated in Maryland; thus, District was obligated to provide educational services required under IDEA in accordance with explicit terms of consent order and hearing officer’s determination (HOD). *Hester v. District of Columbia*, 433 F.Supp.2d 71, 2006 U.S. Dist. LEXIS 27161 (2006), reversed by, remanded by 505 F.3d 1283, 378 U.S. App. D.C. 272, 2007 U.S. App. LEXIS 24415 (2007).

Possibility that university student may intend to leave District of Columbia after graduation to become resident elsewhere does not necessarily affect student’s present intent to become District resident for voting registration purposes. D.C. Code 1981, § 1-1302(16)(A). *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 1997 D.C. App. LEXIS 39 (1997).

Voter registration form sufficiently complied with statute requiring that registrant be resident of District of Columbia, although voter declaration box included statement only that registrant “lived” in District, as form clearly stated in instructions that registrant must be resident, and declaration included affirmation that registrant did not claim right to vote anywhere outside District. D.C. Code 1981, §§ 1-1302(2), 1-1311(a). *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 1997 D.C. App. LEXIS 39 (1997).

Board of Elections and Ethics did not have affirmative responsibility to make preregistration effort to scrutinize registration forms of university students to screen out nonresident, unqualified applicants. D.C. Code 1981, §§ 1-1302(16)(E), 1-1311(a). *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 1997 D.C. App. LEXIS 39 (1997).

Candidate for council seat remained resident of District, as required to establish eligibility to hold public office, during period of incarceration in Virginia and Pennsylvania, since he never

expressed any intent not to return to the District, and he did indeed return upon his release from prison. D.C. Code 1981, §§ 1-225, 1-1302(16)(E). *Lawrence v. District of Columbia Bd. of Elections & Ethics*, 611 A.2d 529, 1992 D.C. App. LEXIS 197 (1992).

Significance of ruling by Board of Elections and Ethics obligated it to state with clarity reasoning behind its decision that successful, write-in candidate with nomadic residence did not satisfy voter residency requirement for advisory neighborhood commission, and, thus, re-

mand was required for Board to articulate rationale of its decision with precision; decision could be viewed as limited to single-member district elections for commission and to particular aspects of participatory democracy; and Board could also have intended to rely on distribution between right to vote in commission elections and right to be elected as single-member representative. D.C. Code 1981, § 1-1302(16), (16)(A). *Williams-Godfrey v. District of Columbia Bd. of Elections & Ethics*, 570 A.2d 737, 1990 D.C. App. LEXIS 35 (1990).

§ 1-1001.03. Board of Elections — Created; composition; term of office; vacancies; reappointment; designation of Chairman.

(a) There is created a District of Columbia Board of Elections (hereafter in this subchapter referred to as the “Board”), to be composed of 3 members, no more than 2 of whom shall be of the same political party, appointed by the Mayor, with the advice and consent of the Council. Members shall be appointed to serve for terms of 3 years, except the members 1st appointed under this subchapter. One member shall be appointed to serve for a 1-year term, 1 member shall be appointed to serve for a 2-year term, and 1 member shall be appointed to serve for a 3-year term, as designated by the Mayor.

(b) Any person appointed to fill a vacancy on the Board shall be appointed only for the unexpired term of the member whose vacancy he or she is filling.

(c) A member may be reappointed, and, if not reappointed, the member shall serve until his successor has been appointed and qualifies.

(d) The Mayor shall, from time to time, designate the Chairman of the Board.

(Aug. 12, 1955, 69 Stat. 699, ch. 862, § 3; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1(2); Dec. 24, 1973, 87 Stat. 809, Pub. L. 93-198, title IV, § 491; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Sept. 2, 1976, D.C. Law 1-79, title I, § 102(2), 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 2(c), (p), (q), 29 DCR 458; Apr. 27, 2012, D.C. Law 19-124, § 501(g)(2), 59 DCR 1862.)

Cross references. — Board of Elections and Ethics, Director of the Office of Campaign Finance, see § 1-1103.01 et seq.

Government reorganization procedures, “agency” defined, see § 1-315.02.

Nomination and approval of agency heads, see § 1-523.01.

Nominees and candidates for public office, disclosure of conflicts of interest, see § 1-1106.02.

Section references. — This section is referred to in § 1-1001.02.

Prior Codifications. — 1981 Ed., § 1-1303. 1973 Ed., § 1-1103.

Effect of amendments. — D.C. Law 19-

124, in the section heading and subsec. (a), substituted “Board of Elections” for “Board of Elections and Ethics”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 401(g)(2) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see His-

torical and Statutory Notes following § 1-1001.02.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Editor's notes. — Definitions applicable: The definitions contained in § 1-202 apply to terms appearing in the amendment to this section made by the Act of December 24, 1973, 87 Stat. 809, Pub. L. 93-198.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-1001.04. Board of Elections — Qualifications; prohibited activities; compensation; removal; time for filling vacancy.

(a) When appointing a member of the Board, the Mayor and Council shall consider whether the individual possesses demonstrated integrity, independence, and public credibility and whether the individual has particular knowledge, training, or experience in government ethics or in elections law and procedure. A person shall not be a member of the Board unless he or she:

(1) Is a duly registered voter;

(2) Has resided in the District continuously since the beginning of the 3-year period ending on the day he or she is appointed; and

(3) Holds no other paid office or employment in the District government and no active office, position, or employment in the federal government.

(b) No person, while a member of the Board, shall:

(1) Campaign for any other public office;

(2) Hold any office in any political party or political committee;

(3) Participate in or contribute to any political campaign of any candidate in any election held under this subchapter;

(3A) Be an officer or a director of an organization receiving District funds, or an employee of an organization receiving District funds, who has managerial or discretionary responsibilities with respect to those funds;

(4) Act in his or her capacity as a member, to directly or indirectly attempt to influence any decision of a District government agency, department, or instrumentality relating to any action which is beyond the jurisdiction of the Board; or

(5) Be convicted of having committed a felony in the District of Columbia; or if the crime is committed elsewhere, conviction of such offense as would be a felony in the District of Columbia.

(c)(1) Each member of the Board, excluding the Chairman, shall receive compensation, as provided in § 1-611.08, while actually in the service of the Board, not to exceed the sum of \$12,500 per annum.

(2) The Chairman of the Board shall receive compensation, as provided in § 1-611.08, while actually in the service of the Board, not to exceed the sum of \$26,500 per annum.

(d)(1) The Mayor may remove any member of the Board who engages in any activity prohibited by subsection (a) or (b) of this section, and appoint a new member to serve until the expiration of the term of the member so removed. When the Mayor believes that any member has engaged in any such activity he or she shall notify such member, in writing, of the charge against him or her and that such member has 7 days in which to request a hearing before the Council on such charge. If such member fails to request a hearing within 7 days after receiving such notice then the Mayor may remove such member and appoint a new member.

(2) The hearing requested by a member may be either open or closed, as requested by such member. In the event such hearing is closed, the vote of the Council as a result of such hearing shall be taken at an open meeting of the Council. The Council shall begin such hearings within 60 calendar days after receiving notice from the Mayor indicating that a member has requested such a hearing. If two-thirds of the Council vote to remove such member then such member shall be removed.

(e) Any vacancy occurring on the Board shall be filled within 45 days after the occurrence of such vacancy, excluding Saturdays, Sundays, and holidays.

(Aug. 12, 1955, 69 Stat. 699, ch. 862, § 4; Sept. 22, 1970, 84 Stat. 854, Pub. L. 91-405, title II, § 205(i); Dec. 23, 1971, 85 Stat. 794, Pub. L. 92-220, § 1(26); Aug. 14, 1974, 88 Stat. 471, Pub. L. 93-376, title VII, § 706(b); Sept. 2, 1976, D.C. Law 1-79, title I, § 102(3), (4), 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 103(a), title IV, § 402, 24 DCR 2372; Mar. 10, 1978, D.C. Law 2-50, § 2, 24 DCR 4806; Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205(v), 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(gg), 27 DCR 2632; Mar. 16, 1982, D.C. Law 4-88, § 2(n), (q), (s), 29 DCR 458; Feb. 4, 2010, D.C. Law 18-103, § 2(b), 56 DCR 9169; Apr. 27, 2012, D.C. Law 19-124, § 501(g)(3), 59 DCR 1862.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-1304. 1973 Ed., § 1-1104.

Effect of amendments. — D.C. Law 18-103 rewrote subsec. (a); and added subsec. (b)(3A).

D.C. Law 19-124, in the section heading, substituted "Board of Elections" for "Board of Elections and Ethics".

Emergency legislation. — For temporary (90 day) amendment of section, see §§ 2(b), 4(a) of Omnibus Election Reform Emergency Amendment Act of 2009 (D.C. Act 18-236, November 30, 2009, 56 DCR 9154).

For temporary (90 day) amendment of section, see § 401(g)(3) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 2-50. — Law 2-50 was introduced in Council and assigned Bill No. 2-153, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 25, 1977 and November 8, 1977, respectively. There being no action by the Mayor, it was assigned Act No. 2-106 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-81. — Law 3-81 was introduced in Council and assigned Bill No. 3-236, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 22, 1980 and May 20, 1980, respectively. Signed by the

Mayor on June 4, 1980, it was assigned Act No. 3-195 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 18-103. — For Law 18-103, see notes following § 1-1001.02.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Editor's notes. — Section 4(a) of D.C. Law 18-103 provided: "(a) Section 2(b)(1) shall not apply to any individual who is a member of the Board of Elections and Ethics on the effective date of this act."

§ 1-1001.05. Board of Elections — Duties.

(a) The Board shall:

(1) Accurately maintain a uniform, interactive computerized voter registration list which shall serve as the official voter registration list for all elections in the District, and shall contain the name, registration information, and a unique identifier assigned for every registered voter in the District. The voter registration list shall be administered pursuant to the Help America Vote Act of 2002 and pertinent federal and local law, and shall be coordinated with other District agency databases;

(2) Take whatever action is necessary and appropriate to actively locate, identify, and register qualified voters;

(3) Conduct elections;

(4) Provide for recording and counting votes by means of ballots or machines or both;

(5) Publish in the District of Columbia Register no later than 45 days before each election held under this subchapter, a fictitious name sample design and layout of the ballot to be used in the election. This requirement shall not apply to any special election to fill a vacancy in an Advisory Neighborhood Commission single-member district;

(6) Publish in 1 or more newspapers of general circulation in the District, a sample copy of the official ballot to be used in any such election, provided, however, nothing contained herein shall require the publication of a sample copy of the official ballots to be used in the advisory neighborhood commissions' elections;

(7) Publish in the District of Columbia Register on the 3rd Friday of every month, the total number of qualified electors registered to vote in the District as of the last day of the month preceding publication. Such notice shall be broken down by ward and political party affiliation, where applicable, and shall list the total number of new registrants, party changes, cancellations, changes of names, and/or addresses processed under each category;

(8) Divide the District into appropriate voting precincts, each of which shall contain at least 350 registered persons; draw precinct lines within election wards created by the Council, subject to the approval of the Council, in whole or in part, by resolution;

(9) Operate polling places;

(10) Provide information regarding procedures for voter registration and absentee ballots to absent uniformed services voters and overseas voters in United States elections, accept valid voter registration applications, absentee ballot applications, and absentee ballots including write-in ballots from all of those voters, and comply with the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1966 (100 Stat. 924; 42 U.S.C. § 1873ff et seq.);

(11) Certify nominees and the results of elections;

(12) Take all reasonable steps to inform all residents and voters of elections and means of casting votes therein;

(13) Repealed;

(14) Issue such regulations and expressly delegate authority to officials and employees of the Board (such delegations of authority only to be effective upon publication in the District of Columbia Register) as are necessary to carry out the purposes of this subchapter, Chapter 11A of this title, subchapter VII of this chapter, and related acts requiring implementation by the Board. The regulations authorized by this paragraph include those necessary to: Determine that candidates meet the statutory qualifications for office; define the form of petitions; establish rules for the circulation and filing of petitions; establish criteria to determine the validity of signatures on petitions; and provide for the registration of any political party seeking to nominate directly candidates in any general or special election;

(15) Take reasonable steps to facilitate voting by blind persons and persons with physical and developmental disabilities, qualified to vote under this subchapter, and to authorize such persons to cast a ballot with the assistance of a person of their own choosing;

(15A) At the request of a candidate, consider what action, if any, should be taken to clarify the identity of a candidate if there is potential for confusion among voters about the identity of a candidate because of the similarity of his or her name to another candidate or elected official;

(16) Perform such other duties as are imposed upon it by this subchapter; and

(17) Perform duties imposed upon it by subchapter VII of this chapter.

(a-1)(1) The Board shall hold regular monthly meetings in accordance with a schedule to be established by the Board. Additional meetings may be called as needed by the Board. Except in the case of an emergency, the Board shall provide at least 48 hours notice of any additional meeting.

(2) The Board shall make available for public inspection and post on its website a proposed agenda for each Board meeting as soon as practicable, but in any event at least 24 hours before a meeting. Copies of the agenda shall be available to the public at the meeting. The Board, according to its rules, may amend the agenda at the meeting.

(3) All meetings of the Board shall be open to the public, unless the members vote to enter into executive session. The Board shall not vote, make resolutions or rulings, or take any actions of any kind during executive session, except those that:

(A) Relate solely to the internal personnel rules or practices of the Board;

(B) Would result in the disclosure of matters specifically exempted from disclosure by statute; provided, that the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(C) Would result in the disclosure of trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(D) Involve accusing any person of a crime or formally censuring any person;

(E) Would result in the disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(F) Would result in the disclosure of investigatory records compiled for law enforcement purposes or information which, if written, would be contained in the records, but only to the extent that the production of the records or information would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy; or

(iv) Disclose investigative techniques and procedures; or

(G) Specifically concern the Board's issuance of a subpoena, the Board's participation in a civil action or proceeding, or disposition by the Board of a particular matter involving a determination on the record after opportunity for a hearing.

(4) The Board shall keep the minutes of each meeting of the Board and shall make the minutes of each meeting available to the public for inspection and distribution, and shall post the minutes on the Board's website, as soon as practicable, but in all cases before the next regularly scheduled meeting.

(b)(1) The Board shall, on the 1st Tuesday in April of each presidential election year, conduct a presidential preference primary election within the District of Columbia in which the registered qualified voters therein may express their preference for candidates of each political party of the District of Columbia for nomination for President.

(2) No person shall be listed on the ballot as a candidate for nomination for President in such primary unless there shall have been filed with the Board no later than 90 days before the date of such presidential primary election a petition on behalf of his or her candidacy signed by at least 1,000, or 1%, whichever is less, of the qualified electors of the District of Columbia who are registered under § 1-1001.07, and of the same political party as the nominee.

(3)(A) Candidates for delegate and alternates where permitted by political party rules to a particular political party national convention convened to nominate that party's candidate for President shall be listed on the ballot of the presidential preference primary held under this chapter as:

(i) Full slates of candidates for delegates supporting a candidate for nomination for President if there shall have been filed with the Board, no later than 90 days before the date of such presidential primary, a petition on behalf of such slate's candidacy signed by the candidates on the slate, and by at least 1,000, or 1%, whichever is less, of the qualified electors of the District of Columbia who are registered under § 1-1001.07 and are of the same political party as the candidates on such slate;

(ii) Full slates of candidates for delegates not committed to support any named candidate for nomination for President if there shall have been filed with the Board, no later than 90 days before the date of such presidential primary, a petition on behalf of such slate's candidacy, signed by the candidates on the slate and by at least 1,000, or 1%, whichever is less, of the qualified electors of the District of Columbia who have registered under § 1-1001.07 and are of the same political party as the candidates on such slate;

(iii) An individual candidate for delegate supporting a candidate for nomination for President if there shall have been filed with the Board, no later than 90 days before the date of such presidential primary, a petition on behalf of such candidate, signed by the candidate and by at least 1,000, or 1%, whichever is less, of the qualified electors of the District of Columbia who have registered under § 1-1001.07 and are of the same political party as the candidate; or

(iv) An individual not committed to support any named candidate for nomination for President if there shall have been filed with the Board, no later than 90 days before the date of such presidential primary, a petition on behalf of such candidate, signed by the candidate and by at least 1,000, or 1%, whichever is less, of the qualified electors of the District of Columbia who have registered under § 1-1001.07 and are of the same political party as the candidate.

(B) No candidate for delegate or alternate may be listed on the ballot unless such candidate was properly selected according to the rules of his political party relating to the nomination of candidates for delegate or alternate.

(C) The governing body of each eligible party shall file with the Board, no later than 180 days prior to the presidential preference primary election:

(i) Notification of that party's intent to conduct a presidential preference primary; and

(ii) A plan for the election detailing the procedures to be followed in the selection of individual delegates and alternates to the convention of that party, including procedures for the selection of committed and uncommitted delegates.

(4) The Board shall:

(A) Arrange the ballot for the presidential preference primary so as to enable each voter to indicate his or her choice for presidential nominee and for the slate of delegates and alternates pledged to support that prospective nominee with 1 mark, and provide an alternative to vote for individual delegates or uncommitted slates of delegates; and

(B) Clearly indicate on the ballot the candidate for nomination for

President which a slate or candidate for delegate supports, or name of the person who shall manage an uncommitted slate of delegates.

(5) The delegates and alternates, of each political party in the District of Columbia to the national convention of that party convened for the nomination of that party for President, elected in accordance with this subchapter, shall only be obliged to vote for the candidate whom he or she has been selected to represent in accordance with properly promulgated rules of the political party, on the 1st ballot cast at the convention for nominees for President, or until such time as such candidate to whom the delegate is committed withdraws his candidacy, whichever 1st occurs.

(c) Each member of the Board and persons authorized by the Board may administer oaths to persons executing affidavits pursuant to § 1-1001.08. It may provide for the administering of such other oaths as it considers appropriate to require in the performance of its functions.

(d) The Board may permit either persons temporarily absent from the District or persons physically unable to appear personally at an official registration place to register for the purpose of voting in any election held under this subchapter.

(e)(1)(A) The Board shall select, employ, and fix the compensation for an Executive Director and such staff the Board deems necessary, subject to the pay limitations of § 1-611.16. The Executive Director shall serve at the pleasure of the Board. The Board, at the request of the Director of Campaign Finance, shall provide employees, subject to the compensation provisions of this paragraph, as requested to carry out the powers and duties of the Director. Employees assigned to the Director shall, while so assigned, be under the direction and control of the Director and may not be reassigned without the concurrence of the Director.

(B) The Executive Director shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.

(C) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Board unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the Board. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of bona fide residency annually to the director of personnel of the Board for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The Board shall submit to the Mayor and Council annual reports detailing the names of all new employees, their pay schedules, titles, and place of residence.

(2) No provision of this subchapter shall be construed as permitting the Board to appoint any personnel who are not full-time paid employees of the

Board to preliminarily determine alleged violations of the law affecting elections, conflicts of interest, or lobbying.

(3) The Board may appoint a General Counsel to serve at the pleasure of the Board. The General Counsel shall be entitled to receive compensation at the same rate as the Executive Director of the Board and shall be responsible solely to the Board. The General Counsel shall perform such duties as may be delegated or assigned to him or her by rule or order of the Board.

(4)(A) The Board shall select, appoint, and fix the compensation of temporary election workers to operate the polling places, including precinct captains who shall oversee the operations of polling places in accordance with rules prescribed by the Board, and polling place workers who shall assist the precinct captains. Precinct captains shall be qualified registered electors in the District. Polling place workers shall be qualified registered electors in the District; provided, that the Board may also appoint as polling place workers individuals who are at least 16 years of age on the day that they are working in this capacity, who reside in the District of Columbia, and who are enrolled in or have graduated from a public or private secondary school or an institution of higher education. Any polling place worker shall be required to:

- (i) Complete at least 4 hours of training;
- (ii) Receive certification as a polling place worker under standards that the Board shall promulgate; and
- (iii) Take and sign an oath of office to honestly, faithfully, and promptly perform the duties of office.

(B) The Board shall establish standards to measure the performance of polling place workers, including the past performance of a polling place worker, and shall consider the polling place worker's past performance before appointing him or her to work as a polling place worker in a subsequent election.

(f)(1) The Board shall prescribe such regulations as may be necessary to ensure that all persons responsible for the proper administration of this subchapter maintain a position of strict impartiality and refrain from any activity which would imply support or opposition to:

(A) A candidate or group of candidates for office in the District of Columbia; or

(B) Any political party or political committee.

(2) As used in this subsection, the terms "office," "political party," and "political committee" shall have the same meaning as that prescribed in § 1-1161.01.

(g) Notwithstanding provisions of the District of Columbia Administrative Procedure Act (§ 2-501 et seq.), the Board may hear any case brought before it under this subchapter or under Chapter 11A of this title by 1 member panels. An appeal from a decision of any such 1 member panel may be taken to either the full Board or to the District of Columbia Court of Appeals, at the option of any adversely affected party. If appeal is taken directly to the District of Columbia Court of Appeals, the decision of a 1 member panel shall be, for purposes of such appeal, considered to be a final decision of the Board. If an appeal is taken from a decision of a 1 member panel to the full Board, the decision of the 1 member panel shall be stayed pending a final decision of the

Board. The Board may, upon a vote of the majority of its members, hear de novo all issues of fact or law relating to an appeal of a decision of a 1 member panel, except the Board may decide to consider only the record made before such 1 member panel. A final decision of the full Board, relating to an appeal brought to it from a 1 member panel, shall be appealable to the District of Columbia Court of Appeals in the same manner and to the same extent as all other final decisions of the Board.

(h)(1) The Board, pursuant to regulations of general applicability, shall have the power to:

(A) Require by subpoena the attendance and testimony of witnesses and the production of documents relating to the execution of the Board's duties; and

(B) Order that testimony in any proceeding or investigation be taken by deposition before any person who is designated by the Board, and has the power to administer oaths and, in these instances, to compel the attendance and testimony of witnesses and the production of documents by subpoena.

(2) The Board may petition the Superior Court of the District of Columbia to enforce the subpoena or order, in the case of a refusal to obey a subpoena or order of the Board issued pursuant to this subsection. Any person failing to obey the Court's order may be held in contempt of court.

(i) The Board shall cause the following information to be posted at each polling place on the day of each election for federal office:

(1) A sample version of the ballot that will be used for the election;

(2) The election and the hours during which polling places will be open;

(3) Instructions on the proper manner of completing a ballot, including a special ballot;

(4) Instructions for mail-in registrants and first-time voters under section 303(b) of the Help America Vote Act of 2002 [42 U.S.C. § 15483(b)];

(5) General information on voting rights under applicable federal and District laws, including the right to cast a special ballot and instructions to contact the appropriate officials if these rights are alleged to have been violated, and;

(6) General information on federal and District law regarding prohibitions on acts of voter fraud and misrepresentation.

(j) Not later than 90 days after the date of each regularly scheduled general election for federal office, the Board shall submit to the Mayor a report, in the format established by the United States Election Assistance Commission, on the number of absentee ballots sent to absent uniformed services voters and overseas voters for the election and the number of ballots which were returned by those voters to the Board. The report shall be transmitted by the Mayor to the United States Election Assistance Commission, and shall be made available to the general public.

(k) Within 90 days following a general election, the Board shall publish on its website an after-action report. The report shall include the following information:

(1) The total number of votes cast, broken down by type of ballot, and including the number of spoiled ballots and special ballots that were not counted;

- (2) The number of persons registered:
 - (A) More than 30 days preceding the election;
 - (B) Between 30 days preceding the election and the date of the election;
- and
- (C) On the date of the election;
- (3) The number of polling place workers, by precinct;
- (4) Copies of any unofficial summary reports generated by the Board on election night;
- (5) A synopsis of any issues identified in precinct captain or area representative logs;
- (6) Performance measurement data of polling place workers;
- (7) A description of any irregularities experienced on election day; and
- (8) Any other information considered relevant by the Board.

(Aug. 12, 1955, 69 Stat. 700, ch. 862, § 5; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1(3), (4), (5), (6); Apr. 22, 1968, 82 Stat. 103, Pub. L. 90-292, § 4(3); Dec. 23, 1971, 85 Stat. 789, Pub. L. 92-220, § 1(5)-(7), (28), (29); Aug. 14, 1973, 87 Stat. 311, Pub. L. 93-92, § 1(2)-(7); Jan. 3, 1975, 88 Stat. 2177, Pub. L. 93-635, § 13; Dec. 16, 1975, D.C. Law 1-37, § 2(1), (2), 22 DCR 3426; Dec. 16, 1975, D.C. Law 1-38, § 4, 22 DCR 3433; Feb. 17, 1976, D.C. Law 1-45, § 2, 22 DCR 4678; Sept. 2, 1976, D.C. Law 1-79, title I, § 102(5), (6), title V, §§ 502, 503, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 103(b), title III, § 301(c)-(f), title IV, § 402, 24 DCR 2372; June 28, 1977, D.C. Law 2-12, § 6(j), 24 DCR 1442; Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205(v), 25 DCR 5740; Oct. 8, 1981, D.C. Law 4-35, § 3, 28 DCR 3376; Mar. 16, 1982, D.C. Law 4-88, § 2(d), (p), (q), 29 DCR 458; July 1, 1982, D.C. Law 4-120, § 2(a), 29 DCR 2064; Aug. 2, 1983, D.C. Law 5-17, § 5(b), 30 DCR 3196; Oct. 9, 1987, D.C. Law 7-36, § 3, 34 DCR 5321; Mar. 16, 1988, D.C. Law 7-92, § 3(a)-(c), 35 DCR 716; Mar. 11, 1992, D.C. Law 9-75, § 2(a), 39 DCR 310; Oct. 20, 1999, D.C. Law 13-40, § 2, 46 DCR 6550; June 21, 2003, D.C. Law 15-18, § 2(a), 50 DCR 3389; Sept. 30, 2004, D.C. Law 15-188, § 2, 51 DCR 6732; Dec. 7, 2004, D.C. Law 15-218, § 2(b), 51 DCR 9132; Apr. 7, 2006, D.C. Law 16-91, § 127(a), 52 DCR 10637; Apr. 24, 2007, D.C. Law 16-305, § 6(a), 53 DCR 6198; Oct. 18, 2007, D.C. Law 17-26, § 2(b), 54 DCR 8018; Feb. 6, 2008, D.C. Law 17-108, § 205, 54 DCR 10993; Feb. 4, 2010, D.C. Law 18-103, § 2(c), 56 DCR 9169; Mar. 31, 2011, D.C. Law 18-330, § 2(a), 58 DCR 20; June 16, 2011, D.C. Law 19-7, § 2(a), 58 DCR 3882; Apr. 27, 2012, D.C. Law 19-124, § 501(g)(4), 59 DCR 1862; June 5, 2012, D.C. Law 19-137, §§ 121(a), 201(a), 59 DCR 2542.)

Cross references. — Advisory Neighborhood Commissions, elections, see § 1-309.05 et seq.

District of Columbia administration, volunteers, see § 1-319.01.

Section references. — This section is referred to in §§ 1-636.02, 1-1001.07, 1-1001.10, 1-1001.15, and 1-1001.17.

Prior Codifications. — 1981 Ed., § 1-1306. 1973 Ed., § 1-1105.

Effect of amendments. — D.C. Law 13-40 added subsec. (h).

D.C. Law 15-18, in subsec. (b)(1), substituted “2nd Tuesday in January” for “1st Tuesday in May”.

D.C. Law 15-188 added par. (4) of subsec. (e).

D.C. Law 15-218 rewrote pars. (1) and (10) of subsec. (a); repealed par. (13) of subsec. (a); and added subssecs. (i) and (j).

D.C. Law 16-91, in subsec. (a)(10), substi-

tuted "United States Election" for "Federal Election"; and, in subsecs. (a) and (j), validated other previously made technical corrections.

D.C. Law 16-305, in subsec. (a)(15), substituted "blind persons and person with physical and developmental disabilities" for "blind, physically handicapped, and developmentally disabled persons".

D.C. Law 17-26, in subsec. (b)(1), substituted "2nd Tuesday in February" for "2nd Tuesday in January".

D.C. Law 17-108, in subsec. (e)(1), designated the existing text as subpar. (A) and added subpars. (B) and (C).

D.C. Law 18-103 added subsecs. (a-1) and (k); and rewrote subsec. (e)(4).

D.C. Law 18-330, in subsec. (a)(15), deleted "and" from the end; and added subsec. (a)(15A).

D.C. Law 19-7, in subsec. (b)(1), substituted "shall, on the 1st Tuesday in April of each presidential election year," for "shall, on the 2nd Tuesday in February of each presidential election year,".

D.C. Law 19-124, in the subsection heading, substituted "Board of Elections" for "Board of Elections and Ethics"; in subsecs. (a)(14) and (g), substituted "Chapter 11A of this title" for "subchapter I of Chapter 11 of this title"; and, in subsec. (f)(2), substituted "§ 1-1161.01" for "§ 1-1101.01".

D.C. Law 19-137, in subsec. (a), substituted "subchapter VII of this chapter, and related acts" for "and related acts" in par. (14), deleted "and" from the end of par. (15), substituted "; and" for a period the end of par. (16), and added par. (17); and, in subsecs. (b)(2), (3)(A)(i) to (iv), substituted "90 days" for "60 days".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Board of Elections and Ethics Subpoena Authority Temporary Amendment Act of 1998 (D.C. Law 12-179, March 26, 1999, law notification 46 DCR 3405).

For temporary (225 day) amendment of section, see § 2 of Youth Pollworker Temporary Amendment Act of 2002 (D.C. Law 14-169, June 28, 2002, law notification 49 DCR 7278).

For temporary (225 day) amendment of section, see § 2(a) of Presidential Primary Petition Waiver and Democratic State Committee Elections Temporary Act of 2003 (D.C. Law 15-55, December 9, 2003, law notification 51 DCR 1790).

For temporary (225 day) amendment of section, see § 2 of Presidential Primary Petition and Filing Waiver Temporary Act of 2003 (D.C. Law 15-80, March 10, 2004, law notification 51 DCR 3372).

For temporary (225 day) amendment of section, see § 2(b) of Help America Vote Temporary Amendment Act of 2004 (D.C. Law 15-120, March 30, 2004, law notification 51 DCR 3807).

For temporary (225 day) amendment of section, see § 2 of Help America Vote Temporary Amendment Act of 2004 (D.C. Law 17-127, March 30, 2004, law notification 51 DCR 3807).

For temporary (225 day) amendment of section, see § 2 of the Presidential Primary Ballot Access Temporary Amendment Act of 2008 (D.C. Law 17-127, March 20, 2008, law notification 55 DCR 4279).

Section 121(a) of D.C. Law 19-88, in subsec. (a)(14), substituted "the Uniform Military and Overseas Voters Temporary Act of 2011, passed on 2nd reading on December 6, 2011 (Enrolled version of Bill 19-547), and related acts" for "and related acts"; in subsec. (a)(15), deleted "and" from the end; in subsec. (a)(16), substituted "; and" for a period; and added subsec. (a)(17) to read as follows:

"(17) Perform duties imposed upon it by the Uniform Military and Overseas Voters Temporary Act of 2011", passed on 2nd reading on December 6, 2011 (Enrolled version of Bill 19-547)."

Section 201(a)(1) of D.C. Law 19-88, in subsecs. (b)(2), (3)(A)(i), (ii), (iii), and (iv), substituted "90 days" for "60 days".

Section 302(b) of D.C. Law 19-88 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 19-95 rewrote subsec. (b)(2) to read as follows:

"(2) No person shall be listed on the ballot as a candidate for nomination for President in such primary unless:

"(A) No later than January 4 of each presidential election year, there shall have been filed with the Board a petition on behalf of the person signed by at least 1,000, or 1%, whichever is less, of the qualified electors of the District of Columbia who are registered under section 7, and are of the same political party as the nominee; or

"(B) The person has complied with the rules of the political party to be listed on the ballot, and if the party rules provide for candidate qualification by means other than gathering petition signatures as described in subparagraph (A) of this paragraph, the political party shall certify to the Board no later than January 4 of each presidential election year the names of candidates for nomination who have qualified by such means."

Section 4(b) of D.C. Law 19-95 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — Sections 101 to 120 of D.C. Law 19-88 added sections to read as follows:

"Sec. 101. Short title.

"This title may be cited as the 'Uniform Military and Overseas Voters Temporary Act of 2011'."

"Sec. 102. Definitions.

"For the purposes of this act, the term:

"(1) 'Board' means the District of Columbia Board of Elections and Ethics, established by section 3 of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.03).

"(2) 'Covered voter' means:

"(A) A uniformed-service voter or an overseas voter who is registered to vote in the District;

"(B) A uniformed-service voter whose voting residence is in the District and who otherwise satisfies the District's voter eligibility requirements;

"(C) An overseas voter who, before leaving the United States, was last eligible to vote in the District and, except for a District residency requirement, otherwise satisfies the District's voter eligibility requirements;

"(D) An overseas voter who, before leaving the United States, would have been last eligible to vote in the District had the voter then been of voting age and, except for a District residency requirement, otherwise satisfies the District's voter eligibility requirements; or

"(E) An overseas voter who was born outside the United States, is not described in subparagraphs (C) or (D) of this paragraph, and, except for a District residency requirement, otherwise satisfies the District's voter eligibility requirements if:

"(i) Before leaving the United States, the voter's last place of residence was with a parent or legal guardian who resided within the District; and

"(ii) The voter has not previously registered to vote in any other state.

"(3) 'Dependent' means an individual recognized as a dependent of a uniformed service voter.

"(4) 'District' means the District of Columbia.

"(5) 'Federal postcard application' means the application prescribed under section 101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1986 (100 Stat. 924; 42 U.S.C. § 1973ff(b)(2)).

"(6) 'Federal write-in absentee ballot' means the ballot described in section 103 of the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1986 (100 Stat. 925; 42 U.S.C. § 1973ff-2).

"(7) 'Military-overseas ballot' means:

"(A) A federal write-in absentee ballot;

"(B) A ballot specifically prepared or distributed for use by a covered voter in accordance with this act; or

"(C) A ballot cast by a covered voter in accordance with this act.

"(8) 'Overseas voter' means a United States citizen who is outside the United States.

"(9) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any terri-

tory or insular possession subject to the jurisdiction of the United States.

"(10) 'Uniformed service' means:

"(A) Active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States;

"(B) The Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

"(C) The National Guard and state militia.

"(11) 'Uniformed-service voter' means an individual who is qualified to vote and is:

"(A) A member of the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States who is on active duty;

"(B) A member of the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States;

"(C) A member on activated status of the National Guard or state militia; or

"(D) A spouse or dependent of a member referred to in this paragraph. "(12) 'United States,' used in the territorial sense, means the several states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

"Sec. 103. Elections covered.

"The voting procedures in this act apply to:

"(1) A general, special, or primary election for President, Vice President, or District of Columbia Delegate to the United States House of Representatives;

"(2) A general, special, or primary election for Mayor, Chairman of the Council, member of the Council, member of the Board of Education, or Attorney General for the District of Columbia;

"(3) An initiative, referendum, or recall measure; and

"(4) A proposed Charter amendment.

"Sec. 104. Role of Board.

"(a) The Board is responsible for implementing this act and the District's responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1986 (100 Stat. 924; 42 U.S.C. 1973ff et seq.).

"(b) The Board shall make available to covered voters information regarding voter registration procedures for covered voters and procedures for casting military-overseas ballots.

"(c) The Board shall establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information under this act.

"(d) The Board shall:

"(1) Develop standardized absentee-voting materials, including privacy and transmission

envelopes and their electronic equivalents, authentication materials, and voting instructions to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the District; and

“(2) To the extent reasonably possible, coordinate with other states to carry out this subsection.

“(e) The Board shall prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter’s identity, eligibility to vote, status as a covered voter, and timely and proper completion of an overseas-military ballot. The declaration must be based on the declaration prescribed to accompany a federal write-in absentee ballot, as modified to be consistent with this act. The Board shall ensure that a form for the execution of the declaration, including an indication of the date of execution of the declaration, is a prominent part of all balloting materials for which the declaration is required.

“Sec. 105. Overseas voter’s registration address.

“In registering to vote, an overseas voter who is eligible to vote in the District must be assigned to the voting precinct of the address of the last place of residence of the voter in the District, or, in the case of a voter described by section 102(2)(E), the address of the last place of residence in the District of the parent or legal guardian of the voter. If that address is no longer a recognized residential address, the voter must be assigned an address for voting purposes.

“Sec. 106. Methods of registering to vote.

“(a) To apply to register to vote, a covered voter may use a federal postcard application or the application’s electronic equivalent, or any other method approved under federal law.

“(b) A covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote if the declaration is received by 30 days before the election.

“(c) The Board shall ensure that the electronic transmission system described in section 104(c) is capable of accepting both a federal postcard application and any other approved electronic registration application sent to the Board. The voter may use the electronic transmission system or any other method approved under federal law to register to vote.

“Sec. 107. Methods of applying for military-overseas ballot.

“(a) A covered voter who is registered to vote in the District may apply for a military-overseas ballot using either the regular absentee ballot application on the form prescribed by the Board or the federal postcard application or the application’s electronic equivalent.

“(b) A covered voter who is not registered to vote in the District may use a federal postcard

application or the application’s electronic equivalent to apply to register to vote under section 106 and for a military-overseas ballot.

“(c) The Board shall ensure that the electronic transmission system described in section 104(c) is capable of accepting the submission of both a federal postcard application and any other approved electronic military-overseas ballot application sent to the Board. The voter may use the electronic transmission system or any other method approved under federal law to apply for a military-overseas ballot.

“(d) A covered voter may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the Board by the 7th day before the election.

“(e) To receive the benefits of this act, a covered voter must inform the Board that the voter is a covered voter. Methods of informing the Board that a voter is a covered voter include:

“(1) The use of a federal postcard application or federal write-in absentee ballot;

“(2) The use of an overseas address on an approved voter registration application or ballot application; and

“(3) The inclusion on an approved voter registration application or ballot application of other information sufficient to identify the voter as a covered voter.

“(f) This act does not preclude a covered voter from voting with a regular absentee ballot as authorized by the Board.

“Sec. 108. Timeliness and scope of application for military-overseas ballot. “An application for a military-overseas ballot is timely if received by the 7th day before the election. An application for a military-overseas ballot for a primary election, whether or not timely, is effective as an application for a military-overseas ballot for the general election.

“Sec. 109. Transmission of unvoted ballots.

“(a) For an election described in section 103 for which the District has not received a waiver pursuant to section 102(g)(2) of the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1986 (100 Stat. 925; 42 U.S.C. § 1973ff-1(g)(2)), no later than 45 days before the election or, if the 45th day before the election is a weekend or holiday, no later than the business day preceding the 45th day, the Board shall transmit a ballot and balloting materials to all covered voters who by that date submit a valid military-overseas ballot application.

“(b) A covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail delivery, or, if offered by the District, Internet deliv-

ery. The Board shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.

“(c) If a ballot application from a covered voter arrives after District begins transmitting ballots and balloting materials to voters, the Board shall transmit the ballot and balloting materials to the voter no later than 2 business days after the application arrives.

“Sec. 110. Timely casting of ballot.

“To be valid, a military-overseas ballot must be submitted by the voter on the date of the election by mailing electronic transmission or other authorized means of delivery no later than 12:01 a.m. at the place where the voter completes the ballot.

“Sec. 111. Federal write-in absentee ballot.

“A covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in section 103.

“Sec. 112. Receipt of voted ballot.

“(a) A valid military-overseas ballot cast in accordance with section 110 must be counted if it is delivered within 10 days after the election to the address that the Board has specified.

“(b) If, at the time of completing a military-overseas ballot and balloting materials, the voter has declared under penalty of perjury that the ballot was timely submitted, the ballot may not be rejected on the basis that it has a late postmark, an unreadable postmark, or no postmark.

“Sec. 113. Declaration.

“A military-overseas ballot must include or be accompanied by a declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of making a false statement under the laws of the District.

“Sec. 114. Confirmation of receipt of application and voted ballot.

“The Board shall implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether:

“(1) The voter’s federal postcard application or other registration or military-overseas ballot application has been received and accepted; and

“(2) The voter’s military-overseas ballot has been received and the current status of the ballot.

“Sec. 115. Use of voter’s electronic-mail address.

“(a) The Board shall request an electronic-mail address from each covered voter who registers to vote after the effective date of this act. An electronic-mail address provided by a covered voter, or by any other District voter, may not be made available to the public or any individual or organization other than an authorized agent of the Board and is exempt from

disclosure under the Freedom of Information Act of 1976, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 et seq.). The address may be used only for official communication with the voter about the voting process, including transmitting military-overseas ballots and election materials if the voter has requested electronic transmission, and verifying the voter’s mailing address and physical location. The request for an electronic-mail address must describe the purposes for which the electronic-mail address may be used and include a statement that any other use or disclosure of the electronic-mail address is prohibited.

“(b) A covered voter who provided an electronic-mail address may request that the voter’s application for a military-overseas ballot be considered a standing request for electronic delivery of a ballot for all elections held through December 31 of the year of the date of the application or another shorter period that the voter specifies. The Board shall provide a military-overseas ballot to a voter who makes a standing request for each election to which the request is applicable. A covered voter who is entitled to receive a military-overseas ballot for a primary election under this subsection is entitled to receive a military-overseas ballot for the general election.

“Sec. 116. Publication of election notice.

“(a) At least 100 days before a regularly scheduled election and as soon as practicable before an election not regularly scheduled, the Board shall prepare an election notice for that jurisdiction, to be used in conjunction with a federal write-in absentee ballot. The election notice must contain a list of all of the ballot measures and federal and District offices which, as of that date the Board expects to be on the ballot on the date of the election. The notice also must contain specific instructions as to how a voter is to indicate on the federal write-in absentee ballot the voter’s choice for each office to be filled and for each ballot measure to be contested.

“(b) A covered voter may request a copy of an election notice. The Board shall send the election notice to the voter by facsimile, electronic mail, or regular mail, as the voter requests.

“(c) No later than 45 days before an election, the Board shall update the election notice described in subsection (a) of this section with the certified candidates for each office and ballot measure questions and make the updated notice publicly available.

“(d) The Board shall make the election notice prepared under subsection (a) of this section and updated versions of the election notice regularly available on the Board’s Internet website.

“Sec. 117. Prohibition of nonsubstantive requirements.

“(a) If a voter’s mistake or omission in the completion of a document under this act does not prevent determining whether a covered voter is eligible to vote, the mistake or omission shall not invalidate the document. Failure to satisfy a nonsubstantive requirement, such as using paper or envelopes of a specified size or weight, shall not invalidate a document submitted under this act. In a write-in ballot authorized by this act or in a vote for a write-in candidate on a regular ballot, if the intention of the voter is discernable under the District’s uniform definition of what constitutes a vote, an abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be accepted as a valid vote.

“(b) Notarization is not required for the execution of a document under this act. An authentication, other than the declaration specified in section 113 or the declaration on the federal postcard application and federal write-in absentee ballot, is not required for the execution of a document under this act. The declaration and any information in the declaration may be compared with information on file to ascertain the validity of the document.

“Sec. 118. Equitable relief.

“The Superior Court of the District of Columbia may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with or to enforce this act on application by:

“(1) A covered voter alleging a grievance under this act; or

“(2) An election official in the District.

“Sec. 119. Uniformity of application and construction.

“In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

“Sec. 119. Uniformity of application and construction.

“In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

“Sec. 120. Relation to Electronic Signatures in Global and National Commerce Act.

“This act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 et seq.) (“Act”), but does not modify, limit, or supersede section 101(c) of that Act (15 U.S.C. § 7001(c)), or authorize electronic delivery of any of the notices described in section 103(b) of that Act (15 U.S.C. § 7003(b)).”

Section 302(b) of D.C. Law 19-88 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2 of the District of Columbia Board of Elections and Ethics Subpoena Authority Emergency Amendment Act of 1998 (D.C. Act 12-409, July 22, 1998, 45 DCR 5178), see § 2 of the Board of Elections and Ethics Subpoena Authority Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-462, October 28, 1998, 45 DCR 7816), and see § 2 of the Board of Elections and Ethics Subpoena Authority Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-2, February 8, 1999, 46 DCR 2286).

For temporary (90 day) amendment of section, see § 2 of Youth Pollworker Emergency Amendment Act of 2002 (D.C. Act 14-305, March 25, 2002, 49 DCR 3404).

For temporary (90 day) amendment of section, see § 2 of Youth Pollworker Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-419, July 17, 2002, 49 DCR 7410).

For temporary (90 day) amendment of section, see § 2(a) of Presidential Primary Election Emergency Amendment Act of 2003 (D.C. Act 15-43, March 24, 2003, 50 DCR 2805).

For temporary (90 day) amendment of section, see § 2(a) of Presidential Primary Petition Waiver and Democratic State Committee Elections Emergency Act of 2003 (D.C. Act 15-135, July 29, 2003, 50 DCR 6857).

For temporary (90 day) amendment of section, see § 2 of Presidential Primary Petition and Filing Waiver Emergency Act of 2003 (D.C. Act 15-207, October 24, 2003, 50 DCR 9853).

For temporary (90 day) amendment of section, see § 2(b) of Help American Vote Emergency Amendment Act of 2003 (D.C. Act 15-283, December 18, 2003, 51 DCR 197).

For temporary (90 day) amendment of section, see § 2(b) of Help America Vote Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-405, March 18, 2004, 51 DCR 3650).

For temporary (90 day) amendment of section, see § 2 of Youth Poll Worker Emergency Act of 2004 (D.C. Act 15-494, August 2, 2004, 51 DCR 8791).

For temporary (90 day) amendment of section, see § 2(b) of Help America Vote Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-658, December 29, 2004, 52 DCR 492).

For temporary (90 day) amendment of section, see § 2 of Presidential Primary Ballot Access Emergency Amendment Act of 2007 (D.C. Act 17-231, December 27, 2007, 55 DCR 231).

For temporary (90 day) amendment of section, see § 2(c) of Omnibus Election Reform Emergency Amendment Act of 2009 (D.C. Act 18-236, November 30, 2009, 56 DCR 9154).

For temporary (90 day) addition of section, see § 2 of Precinct Boundary Changes Emer-

gency Approval Act of 2011 (D.C. Act 19-219, November 7, 2011, 58 DCR 9472).

For temporary (90 day) addition of sections, see §§ 101 to 120 of Comprehensive Military and Overseas Voters Accommodation Emergency Act of 2011 (D.C. Act 19-230, November 16, 2011, 58 DCR 9942).

For temporary (90 day) amendment of section, see §§ 121(a), 201(a)(1) of Comprehensive Military and Overseas Voters Accommodation Emergency Act of 2011 (D.C. Act 19-230, November 16, 2011, 58 DCR 9942).

For temporary (90 day) amendment of section, see § 2 of Presidential Primary Ballot Access Emergency Amendment Act of 2011 (D.C. Act 19-260, December 21, 2011, 58 DCR 11230).

For temporary (90 day) amendment of section, see § 401(g)(4) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

For temporary (90 day) addition of sections, see §§ 101 to 120 of Comprehensive Military and Overseas Voters Accommodation Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-310, February 22, 2012, 59 DCR 1688).

For temporary (90 day) amendment of section, see §§ 121(a), 201(a)(1) of Comprehensive Military and Overseas Voters Accommodation Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-310, February 22, 2012, 59 DCR 1688).

Legislative history of Law 1-37. — Law 1-37 was introduced in Council and assigned Bill No. 1-69, which was referred to the Committee on Governmental Operations. The Bill was adopted on first and second readings on July 29, 1975 and September 9, 1975, respectively. Signed by the Mayor on October 6, 1975, it was assigned Act No. 1-51 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-38. — Law 1-38 was introduced in Council and assigned Bill No. 1-78, which was referred to the Committee on Governmental Operations. The Bill was adopted on first and second readings on July 29, 1975 and September 9, 1975, respectively. Signed by the Mayor on October 6, 1975, it was assigned Act No. 1-52 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-45. — Law 1-45 was introduced in Council and assigned Bill No. 1-184, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 7, 1975 and October 21, 1975, respectively. Signed by the Mayor on November 7, 1975, it was assigned Act No. 1-65 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 2-12. — Law 2-12 was introduced in Council and assigned Bill No. 2-87, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 22, 1977 and April 5, 1977, respectively. Signed by the Mayor on April 26, 1977, it was assigned Act No. 2-33 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-1001.04.

Legislative history of Law 4-35. — Law 4-35 was introduced in Council and assigned Bill No. 4-229, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 16, 1981 and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-62 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 4-120. — Law 4-120 was introduced in Council and assigned Bill No. 4-235, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 6, 1982 and April 27, 1982, respectively. Signed by the Mayor on May 11, 1982, it was assigned Act No. 4-183 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-17. — For legislative history of D.C. Law 5-17, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 7-36. — Law 7-36 was introduced in Council and assigned Bill No. 7-221, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 16, 1987 and June 30, 1987, respectively. Signed by the Mayor on July 23, 1987, it was assigned Act No. 7-64 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-92. — Law 7-92 was introduced in Council and assigned Bill No. 7-321, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 8, 1987 and January 5, 1988, respec-

tively. Signed by the Mayor on January 25, 1988, it was assigned Act No. 7-134 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-75. — Law 9-75 was introduced in Council and assigned Bill No. 9-242, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 5, 1991, and December 3, 1991, respectively. Signed by the Mayor on January 3, 1992, it was assigned Act No. 9-127 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-40. — Law 13-40, the “Board of Elections and Ethics Subpoena Authority Amendment Act of 1999,” was introduced in Council and assigned Bill No. 13-146, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 1, 1999, and July 6, 1999, respectively. Signed by the Mayor on July 19, 1999, it was assigned Act No. 13-113 and transmitted to both Houses of Congress for its review. D.C. Law 13-40 became effective on October 20, 1999.

Legislative history of Law 15-18. — Law 15-18, the “Presidential Primary Election Amendment Act of 2003,” was introduced in Council and assigned Bill No. 15-81, which was referred to Committee on Government Operations. The Bill was adopted on first and second readings on March 4, 2003, and April 1, 2003, respectively. Signed by the Mayor on April 15, 2003, it was assigned Act No. 15-65 and transmitted to both Houses of Congress for its review. D.C. Law 15-18 became effective on June 21, 2003.

Legislative history of Law 15-188. — Law 15-188, the “Youth Pollworker Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-124, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 4, 2004, and June 1, 2004, respectively. Signed by the Mayor on June 23, 2004, it was assigned Act No. 15-455 and transmitted to both Houses of Congress for its review. D.C. Law 15-188 became effective on September 30, 2004.

Legislative history of Law 15-218. — For D.C. Law 15-218, see notes following § 1-1001.02

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 1-307.02.

Legislative history of Law 17-26. — For Law 17-26, see notes following § 1-1001.01.

Legislative history of Law 17-108. — For Law 17-108, see notes following § 1-209.05.

Legislative history of Law 18-103. — For Law 18-103, see notes following § 1-1001.02.

Legislative history of Law 18-330. — Law 18-330, the “Corrupt Election Practices Amendment Act of 2010,” was introduced in Council and assigned Bill No. 18-894, which was referred to the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on November 23, 2010, and December 7, 2010, respectively. Enacted without signature of the Mayor on January 8, 2011, it was assigned Act No. 18-652 and transmitted to both Houses of Congress for its review. D.C. Law 18-330 became effective on March 31, 2011.

Legislative history of Law 19-7. — Law 19-7, the “District of Columbia Board of Elections and Ethics Primary Date Alteration Amendment Act of 2011,” was introduced in Council and assigned Bill No. 19-90, which was referred to the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on March 15, 2011, and April 5, 2011, respectively. Signed by the Mayor on April 27, 2011, it was assigned Act No. 19-53 and transmitted to both Houses of Congress for its review. D.C. Law 19-7 became effective on June 16, 2011.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-309.05.

References in text. — Section 303(b) of the Help America Vote Act of 2002, referred to in par. (4) of subsec. (i) is codified as 42 U.S.C. A. § 15483(b).

Resolutions. — Resolution 14-541, the “Precinct Boundary Changes Emergency Approval Resolution of 2002,” was approved effective July 26, 2002.

Resolution 14-587, the “Ward 6 Precinct Establishment Emergency Approval Resolution of 2002,” was approved effective October 18, 2002.

Editor’s notes. — Adjustments to voting precinct boundaries approved: Pursuant to Resolution 9-120 by the Council of the District of Columbia, The “Precinct Boundary Changes Approval Resolution of 1991,” the Council of the District of Columbia disapproved in part, and approved in part, the adjustments to voting precinct boundaries as adopted by the Board of Elections and Ethics on September 6, 1991, to be effective January 1, 1992: the Council disapproved the proposed change in the boundary between precinct 127 (Ward 2) and precinct 131 (Ward 6); the Council approved all of the remaining proposed changes affecting precincts 1, 5, 6, 7, 8, 11, 12, 13, 14, 83, 114, 119, 128, 130, 131, 132, 133, and 134, and a map was included of such changes.

Precinct boundaries approved: Pursuant to § 1-1001.05(a)(8), § 2 of D.C. Law 7-36 approved boundary divisions for Precincts 50, 71,

and 112 and the boundary line between Precincts 11 and 12.

Voting accessibility for the elderly and handicapped: Public Law 98-435 enacted the Voting Accessibility for the Elderly and Handicapped Act.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Powers.

Registration of voters.

Review.

Write-in votes.

Powers.

District of Columbia Campaign Finance Reform and Conflict of Interest Act empowers Board of Elections and Ethics to issue declaration as to whether Act can be applied constitutionally to a party requesting such a ruling. D.C. Code §§ 1-1105(a)(8), 1-1156(a, c). *Doe v. Martin*, 404 F. Supp. 753, 1975 U.S. Dist. LEXIS 15630 (1975).

Obvious falsity of signatures in many of the nominating petition sheets submitted by some of the circulators working to place mayor on ballot could be properly considered by the Board of Elections and Ethics in judging the veracity of all of the signatures such circulators submitted, and it was within the authority of the Board to disregard all of the signatures attributable to such circulators without conducting a signature-by signature review. *Williams v. D.C. Bd. of Elections & Ethics*, 804 A.2d 316, 2002 D.C. App. LEXIS 439 (2002).

Registration of voters.

Statute allowing District of Columbia election board to take necessary and appropriate action to actively locate, identify, and register qualified voters allowed Board to take steps related to protecting potential voters from being improperly dissuaded from exercising their franchise. D.C. Code 1981, § 1-1306(a)(2). *Scolaro v. District of Columbia Bd. of Elections*

& Ethics, 946 F. Supp. 80, 1996 U.S. Dist. LEXIS 17972 (1996).

Review.

Court of Appeals must accept findings of fact by the Board of Elections and Ethics so long as they are supported by substantial evidence on the record as a whole. *Williams v. D.C. Bd. of Elections & Ethics*, 804 A.2d 316, 2002 D.C. App. LEXIS 439 (2002).

Insofar as legal conclusions of Board of Elections and Ethics are concerned, court must defer to its interpretation of statute which it administers, so long as that interpretation is not plainly wrong or inconsistent with legislative purpose. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 1997 D.C. App. LEXIS 39 (1997).

Where board of elections has undertaken to define and apply its own regulations, Court of Appeals is governed by prescribed reasonableness standard and cannot substitute different judgment for reasonable board action. D.C. Code § 1-1108(j)(2). *In re Haworth*, 258 A.2d 447, 1969 D.C. App. LEXIS 339 (App. 1969).

When Congress provided judicial review of action of District of Columbia Board of Elections, it did not intend to permit Board to finally decide questions of law, and prescribed standard for review permitted Court of Appeals to determine such issues. D.C. Code § 1-1108(j)(2). *In re Haworth*, 258 A.2d 447, 1969 D.C. App. LEXIS 339 (App. 1969).

Write-in votes.

The Board of Elections should exercise its rule-making power to facilitate write-in votes in the future for candidates for president and vice president. D.C. Code § 1-1105(d). *Kamins v. Board of Elections*, 324 A.2d 187, 1974 D.C. App. LEXIS 255 (1974).

§ 1-1001.06. Board independent agency; facilities; seal.

(a) In the performance of its duties, or in matters of procurement the Board shall not be subject to the direction of any nonjudicial officer of the District,

except as provided in the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (§ 1-601.01 et seq.).

(b) The District government shall furnish to the Board, upon request of the Board, such space and facilities as are available in public buildings in the District to be used as registration or polling places, and such records, information, services, personnel, offices, and equipment, and such other assistance and facilities as may be necessary to enable the Board properly to perform its functions. Privately owned space, facilities and equipment may be rented by the Office of Contracting and Procurement on behalf of the Board for the registration, polling, and other functions of the Board.

(c) Subject to the approval of the Mayor of the District of Columbia, the Board is authorized to adopt and use a seal.

(Aug. 12, 1955, 69 Stat. 700, ch. 862, § 6; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1(7); Mar. 3, 1979, D.C. Law 2-139, § 3205(ggg), 25 DCR 5740; Apr. 12, 1997, D.C. Law 11-259, § 308, 44 DCR 1423.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-1310. 1973 Ed., § 1-1106.

Emergency legislation. — For temporary (90 day) addition, see § 2(d) of Omnibus Election Reform Emergency Amendment Act of 2009 (D.C. Act 18-236, November 30, 2009, 56 DCR 9154).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-1001.04.

Legislative history of Law 11-259. — Law 11-259, the “Procurement Reform Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-705, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 9, 1997.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-1001.06a. Establishment of the Election Reform Fund.

(a) There is established as a nonlapsing fund the Election Reform Fund (“Fund”), which shall be administered by the Board and shall be used for the purpose of implementing the Omnibus Election Reform Amendment Act of 2009 [D.C. Law 18-103]. On or about October 1, 2009, the Chief Financial Officer shall deposit \$300,000 into the Fund.

(b) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection

(a) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(c) Repealed.

(Aug. 12, 1955, 69 Stat. 700, ch.682, § 6a, as added Mar. 3, 2010, D.C. Law 18-111, § 1051, 56 DCR 181; Feb. 4, 2010, D.C. Law 18-103, § 2(d), 57 DCR 9169.)

Effect of amendments. — D.C. Law 18-103, in subsec. (a), substituted “and shall be used for the purpose of implementing the Omnibus Election Reform Amendment Act of 2009 D.C. Law 18-255” for “and shall be used solely to implement election reform initiatives to be enacted by the Council”; and repealed subsec. (c), which had read as follows: “(c) Notwithstanding subsection (a) of this section, no funds in the Fund shall be expended until the Council approves, by resolution, a September 2010 primary election preparation plan submitted to the Council by March 31, 2010.”

Emergency legislation. — For temporary (90 day) addition, see § 1051 of Fiscal Year 2010 Budget Support Second Emergency Act of

2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 1051 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-103. — For Law 18-103, see notes following § 1-1001.02.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Short title. — Short title: Section 1050 of D.C. Law 18-111 provided that subtitle F of title I of the act may be cited as the “Election Reform Fund Establishment Amendment Act of 2009”.

§ 1-1001.07. Voter.

(a) No person shall be registered to vote in the District of Columbia unless:

(1) He or she meets the qualifications as a qualified elector as defined in § 1-1001.02(2);

(2) He or she executes an application to register to vote by signature or mark (unless prevented by physical disability) on a form approved pursuant to subsection (b) of this section or by the Federal Election Commission attesting that he or she meets the requirements as a qualified elector, and if he or she desires to vote in party election, this form shall indicate his or her political party affiliation; and

(3) The Board approves his or her registration application as provided in subsection (e) of this section.

(a-1)(1) No application for voter registration may be accepted or processed by the Board unless the application includes:

(A) The driver’s license number of the applicant, or

(B) The last 4 digits of the social security number of an applicant who has not been issued a current and valid driver’s license.

(2) If an applicant has not been issued a current and valid driver’s license or a social security number, the Board shall assign the applicant the unique identifier assigned pursuant to § 1-1001.05(a)(1).

(a-2) A person who is otherwise qualified may pre-register on or after that person’s 16th birthday and may vote in any election occurring on or after that person’s 17th birthday; provided, that the person is at least 18 years of age on or before the next general election.

(b) In administering the provisions of subsection (a)(2) of this section:

(1) The Board shall prepare and use a registration application form that meets the requirements of the National Voter Registration Act of 1993 [42

U.S.C. § 1973gg et seq.] and of the Help America Vote Act of 2002, and in which each request for information is readily understandable and can be satisfied by a concise answer or mark.

(2) Mail-in voter registration application forms approved by the Board shall meet the requirements of the National Voter Registration Act of 1993, approved May 20, 1993 (107 Stat. 77; 42 U.S.C. § 1973gg et seq.) and the Help America Vote Act of 2002, shall be designed to provide an easily understood method of registering to vote by mail, and shall be mailed to the Board with postage prepaid. These forms shall have printed on them, in bold face type, the penalties for fraudulently attempting to register to vote pursuant to § 1-1001.14(a) and the National Voter Registration Act of 1993 [42 U.S.C. § 1973gg et seq.]. If an applicant fails to properly complete the registration form, the Board's registrar shall notify the applicant and provide the applicant with an opportunity to complete the form in a timely manner prior to the next election.

(3) The Board shall accept any application form that has been preapproved by the Board for the purpose of voter registration and meets the requirements of this subsection or has been approved for use by federal legislation or regulation.

(4) The Board shall provide a field on voter registration forms to allow an applicant to indicate his or her interest in working as a polling place worker during the next election.

(c)(1)(A) Each Bureau of Motor Vehicle Services application (including any renewal application) shall automatically serve as an application to register to vote in the District of Columbia, unless the applicant fails to sign the voter registration portion of the application.

(B) The Bureau of Motor Vehicle Services and the Board shall jointly develop an application form that shall allow an applicant who wishes to register to vote to do so by the use of a single form that contains the necessary information for voter registration and information required for the issuance, renewal, or correction of the applicant's driver's permit or nondriver's identification card in any motor vehicle services office.

(C) The application for voter registration submitted pursuant to this subsection shall be considered as an update to any previous voter registration.

(D) Any application submitted for the purpose of a change of address or name accepted by the Bureau of Motor Vehicle Services, pursuant to this subsection, shall be considered notification to the Board of the change of address or name unless the applicant states on the combined portion of the form that the change of address or name is not for voter registration purposes.

(E) The combined portion of the application shall be designed so that the applicant can:

(i) Clearly state whether the change of address or name is for voter registration purposes;

(ii) Provide a mailing address, if mail is not received at the residence address; and

(iii) State whether he or she is a citizen of the United States.

(F) On a separate and distinct portion of the form, to be used for voter registration purposes, the applicant shall:

- (i) Indicate a choice of party affiliation (if any);
- (ii) Indicate the last address of voter registration (if known); and
- (iii) Sign, under penalty of perjury, an attestation, which sets forth the requirements for voter registration, and states that he or she meets each of those requirements.

(G) The instructions for completing the form shall also include a statement that:

- (i) If an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

- (ii) If an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(H) The deadline for transmission of the voter registration application to the Board shall be not later than 10 days after the date of acceptance by the Bureau of Motor Vehicle Services, except that if a voter registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the Board not later than 5 days after the date of its acceptance.

(I) An application to register to vote or for change of address, party, or name shall be considered received by the Board pursuant to subsection (e) of this section on the date it was accepted by the Bureau of Motor Vehicle Services.

(J) Any form issued by mail for the purposes of correcting or updating a driver's permit or nondriver's identification card shall be designed so that the individual may state whether the change of address or name is for voter registration purposes and provide a mailing address, if mail is not received at the residence address.

(K) The Board and the Bureau of Motor Vehicle Services shall match information in their respective databases to enable each agency to verify the accuracy of the information on applications for voter registration.

(2) The registration application form shall be designed by the Board to provide an easily understood method of registering to vote by mail and shall be mailable to the Board postage prepaid. Such forms shall have printed on them in bold face type the penalties for fraudulently attempting to register to vote.

(d)(1)(A) Any agency of the District of Columbia government that provides public assistance or that operates or funds programs primarily engaged in providing services to persons with disabilities shall be designated as a voter registration agency.

(B) In addition to the agencies named in subparagraph (A) of this paragraph, the Department of Parks and Recreation, the Department of Corrections, the Department of Youth and Rehabilitative Services, and the Office of Aging shall be designated as voter registration agencies.

(C) The Mayor may designate any other executive branch agency of the District of Columbia government as a voter registration agency by filing written notice of the designation with the Board.

(D) The District shall cooperate with the Secretary of Defense to

develop and implement procedures for persons to apply to register to vote at Armed Forces recruitment offices.

(2) The agencies named in paragraphs (1)(A), (B), and (C) of this subsection shall:

(A) Distribute with each application for service or assistance, and with each recertification, renewal, or change of address form relating to the service or assistance, a voter registration application, unless the applicant, in writing, declines to register to vote;

(B) Provide assistance to applicants in completing voter registration application forms, unless the applicant refuses assistance;

(C) Provide the services described in this paragraph at the person's home, if a voter registration agency provides services to a person with a disability at the person's home; and

(D) Accept completed forms and forward these forms to the Board as prescribed in this section.

(3) Each voter registration agency shall, on its own application, document, or on a separate form, provide to each applicant for service or assistance, recertification or renewal, or change of address the following information:

(A) The question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

(B) Boxes for the applicant to check to indicate whether the applicant would like to register or decline to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of subparagraph (C) of this paragraph, together with the statement (in close proximity to the boxes and in prominent type), "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";

(C) The statement, "If you would like help completing the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may complete the application form in private.";

(D) The statement, "If you believe that someone has interfered with your right to register or decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the chief administrative officer of the Board of Elections and Ethics."; the name, title, address, and telephone number of the chief administrative officer shall be included on the form; and

(E) If the voter registration agency provides public assistance, the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency."

(4) No person who provides a voter registration service at a District of Columbia government agency shall:

(A) Seek to influence an applicant's political preference or party registration;

(B) Display any political preference or party allegiance;

(C) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(D) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(5) Each agency that has been designated a voter registration agency in paragraph (1) of this subsection shall provide to each applicant who does not decline to register the same degree of assistance with regard to the completion of the registration application form as provided by the office with regard to the completion of its own forms, unless the applicant refuses assistance.

(6) No information that relates to a declination to register to vote in connection with an application made at an office described in this subsection may be used for any purpose other than voter registration.

(7) No voter registration agency shall reveal whether a particular individual completed an application to register to vote except when ordered by the officer designated in paragraph (12)(A) of this subsection when a complaint has been filed pursuant to paragraph (11) of this subsection or pursuant to § 11 of the National Voter Registration Act of 1993.

(8) A completed voter registration application or change of address or name accepted at a voter registration agency shall be transmitted by the agency to the Board by not later than 10 days after its acceptance by the agency, except that if a voter registration application is accepted at a voter registration agency office within 5 days before the deadline for voter registration in any election, the application shall be transmitted by the agency to the Board not later than 5 days after the date of acceptance.

(9) An application accepted at a voter registration agency shall be considered to have been received by the Board pursuant to subsection (e) of this section as of the date of acceptance by the voter registration agency.

(10) Notwithstanding any other provision of law, the Board shall ensure that the identity of the voter registration agency through which any particular individual is registered to vote is not disclosed to the public.

(11) An allegation of violation of the National Voter Registration Act of 1993 [42 U.S.C. § 1973gg et seq.] or of this subchapter may be made in writing, filed with the chief administrative officer of the Board and detail concisely the alleged violation.

(12)(A) The Board shall designate its chief administrative officer as the official responsible for the coordination of the District of Columbia's responsibilities under the National Voter Registration Act of 1993 [42 U.S.C. § 1973gg et seq.] and as the official responsible for the coordination of this subchapter.

(B) The chief administrative officer designated under subparagraph (A) of this paragraph and the Board shall have the authority:

(i) To request any voter registration agency to submit in writing any reports and to answer any questions as the chief administrative officer or the Board may prescribe that relate to the administration and enforcement of the National Voter Registration Act of 1993 [42 U.S.C. § 1973gg et seq.] and of this subchapter; and

(ii) To bring a civil action in the Superior Court of the District of Columbia for declaratory or injunctive relief with respect to the failure of any voter registration agency to comply with the requirements of this subchapter.

(13) The Board may adopt regulations with respect to the coordination and administration of the National Voter Registration Act Conforming Amendment Act of 1994 and the National Voter Registration Act of 1993 [42 U.S.C. § 1973gg et seq.].

(14)(A) Agencies, other than voter registration agencies, may be designated as application distribution agencies. These agencies shall include the District of Columbia Public Library, the District of Columbia Fire Department, the Metropolitan Police Department, and any other executive agency the Mayor designates in writing.

(B) Each application distribution agency shall request, and the Board shall provide, sufficient quantities of mail-in voter registration applications for distribution to the public.

(C) These mail-in voter registration applications shall be placed in each office or substation of the agency in an accessible location and in clear view so that citizens may easily obtain a mail-in voter registration application.

(D) Nothing in this subsection shall be deemed to require or permit employees of a mail-in voter registration application distribution agency to accept completed forms for delivery to the Board or to provide assistance in completing an application.

(e)(1) Within 19 calendar days after the receipt of a registration application form from any applicant, the Board shall mail a non-forwardable voter registration notification to the applicant advising the applicant of the acceptance or rejection of the registration application by its chief voter registration official.

(2) If the application is accepted, the notification shall include the applicant's name, address, date of birth, party affiliation (if any), ward, precinct and Advisory Neighborhood Commission single-member district ("SMD"), the address of the applicant's polling place and the hours during which the polls will be open. The voter registration notification shall state that the applicant shall not vote before her or his 18th birthday. The Board may include along with the registration notification any voter education materials it deems appropriate. Registration of the applicant shall be effective on the date the Board determines that the applicant is a qualified elector and eligible to register to vote in the District of Columbia.

(3) If the application is rejected, the notification shall include the reason or reasons for the rejection and shall inform the voter of his or her right to appeal the rejection pursuant to subsection (f) of this section.

(4) If the voter registration notification is returned to the Board as undeliverable, the Board shall mail the notice provided in subsection (j)(1)(B) of this section.

(5)(A) Any duly registered voter may file with the Board objections to the registration of any person whom he or she has reason to believe is fictitious, deceased, a disqualified person, or otherwise ineligible to vote (except with respect to a change of residence), or file a request for the addition of any person whose name he or she has reason to believe has been erroneously omitted or cancelled from the voter roll. Application for the correction of the voter roll or the challenge of the right to vote of any person named on the voter roll shall be

in writing and include any evidence in support of the challenge that the registrant is not qualified to be a registered voter. The Board shall issue regulations establishing an expedited procedure for its review of a voter registration challenge or an application for correction of the voter roll filed during the period beginning on the 90th day before an election and ending on the 45th day before an election. The Board shall not accept a voter registration challenge or application for correction of the voter roll after the 45th day before an election.

(B) The Board shall send notice to any person whose registration has been challenged along with a copy of any evidence filed in support of the challenge. The notice shall be sent to the address listed on the Board's records. The notice shall state that the registrant must respond to the challenge not later than 30 days from the date of the mailing of the notice or be cancelled from the voter roll.

(C) The Board's chief voter registration official shall make a determination with respect to the challenge within 10 days of receipt of the challenged registrant's response. The determination shall be sent by first class mail to the challenged registrant and the person who filed the challenge. Within 14 days of mailing the notice, any aggrieved party may appeal, in writing, the chief voter registration official's determination to the Board. The Board shall conduct a hearing and issue a decision within 30 days of receipt of the written notice of appeal.

(D) With respect to a request for the addition of a person to the voter roll, if the Board's records do not evidence that the individual named has been erroneously omitted or cancelled, the Board shall send notice to the individual named in the request and to the person who filed the request. The notice shall state that the named individual must file a completed voter registration application in order to become a registered voter in the District.

(6) An individual whose registration has been cancelled under this section shall not be eligible to vote except by re-registration as provided in this section.

(f) In the case where a voter registration application is rejected pursuant to subsection (e) of this section, the Board shall immediately notify the individual of the rejection by first class mail. The individual may request a hearing before the Board on the rejection within 14 days after the notification is mailed. Upon the request for a hearing, the Board shall hold the hearing within 30 days after receipt of the request. At the hearing, the applicant and any interested party, may appear and give testimony on the issue. The Board shall determine the issue within 2 days after the hearing. Any aggrieved party may appeal the decision of the Board to the Superior Court of the District of Columbia within 3 days after the Board's decision. The decision of the Court shall be final and not appealable. If any part of the process is pending on the date of any election held under this subchapter, the person whose registration is in question shall be permitted to cast a ballot in such election which is designated "challenged". The ballot shall be counted in the election if the applicant is ultimately deemed to be a qualified registered elector.

(f-1) Repealed.

(g)(1) At any time except during the 30-day period preceding any regularly scheduled election, a qualified elector or any individual who will be a qualified

elector at the time of the next election may register to vote in the precinct in which the voter maintains residence by completing a voter registration application and submitting it in person at the Board's office or by mail. A registration that is received no later than 4:45 P.M. on the 30th day preceding any election, or such time on that day as the Board's office remains open to receive registrations, shall be accepted.

(2) The Board shall process:

(A) Mailed voter registration applications and registration update notifications received postmarked by not later than the 30th day preceding any election; and

(B) Timely completed non-postmarked voter registration applications and registration update notifications mailed and received not later than the 23rd day preceding any election.

(3) The Board shall process faxed postcard applications from persons eligible to vote absentee in federal elections in the District of Columbia pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1966 (100 Stat. 924; 42 U.S.C. § 1973ff et seq.), which are faxed not later than the 30th day preceding any election.

(4) After the 30th day preceding an election, a qualified elector may register to vote in the precinct in which the voter maintains residence by completing a voter registration application and submitting it in person at the Board's office. A qualified elector shall not change his or her party affiliation after the 30th day preceding an election.

(5) A qualified elector may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence by completing a voter registration application, making an oath in the form prescribed by the Board, and providing proof of residence. An individual may prove residence for purposes of registering by presenting such identification as required under federal law, District law, or Board regulation. Each individual who registers on Election Day shall cast a special ballot, subject to the Board's verification of residence. A qualified elector shall not change his or her party affiliation on election day.

(6) The precinct captain shall keep a record of individuals who attempt to register on election day and shall indicate the form of proof of residency provided by the person. The record shall be forwarded to the Board with the election returns for that precinct.

(7)(A) The Board shall maintain a list, including the name and addresses, of all individuals who either:

(i) Attempted to register and vote in the election, but could not provide proof of residence; or

(ii) Successfully registered and voted.

(B) The Board shall make the list available to public inspection upon request.

(h)(1) No later than 45 days preceding any election held under this subchapter, the Board shall cause a District-wide alphabetical list of qualified electors registered to vote in the District to be placed in the main public library and shall cause an alphabetical ward list of qualified registered electors for each

ward to be placed in each branch library located within the respective ward. Such lists shall be current as of the 60th day preceding such elections.

(2) The Board shall cause a copy of the list of qualified electors registered to vote as of the date the voter registry closed to be placed in public buildings of the District of Columbia for a period of not less than 14 days preceding each election held under this subchapter as follows:

(A) A District-wide list shall be placed in the main public library; and

(B) A ward list for the ward shall be placed in every branch library located within the respective ward.

(3) The provisions of this subsection shall not apply when a special election is held to fill a vacancy in an Advisory Neighborhood Commission single-member district.

(i)(1) A person shall be entitled to vote in an election in the District of Columbia if he or she is a duly registered voter. A qualified elector shall be considered duly registered in the District if he or she has met the requirements for voter registration and, on the day of the election, either resides at the address listed on the Board's records or files an election day change of address pursuant to this subsection.

(2) Each registered voter who changes his or her place of residence from that listed on the Board's records shall notify the Board, in writing, of the new residence address. A change of address shall be effective on the date the notification was mailed as shown by the United States Postal Service postmark. If not postmarked, the notification shall be effective on the date of receipt by the Board. Change of address notifications from registrants shall be accepted pursuant to subsection (g) of this section, except that any registrant who has not notified the Board of his or her current residence address by the deadline established by subsection (g) of this section may be permitted to vote at the polling place that serves the current residence address by filing an election day change of address notice pursuant to paragraph (4) of this subsection.

(3) Each registered voter who votes at a polling place on election day shall affirm his or her residence address as it appears on the official registration roll for the precinct. The act of signing a copy of the official registration roll for the precinct shall be deemed affirmation of the voter's address as it appears on the Board's registration records.

(4)(A) A registered voter who has moved within the District but has not notified the Board in writing of his or her current address by the deadline established pursuant to subsection (g) of this section, or who is designated inactive pursuant to subsection (j) of this section, shall, prior to being permitted to vote, file notification of a change of address on a form provided by the Board, at the polling place serving the current residence address.

(B) A registered voter who files an election day change of address at the precinct of current residence in accordance with this paragraph shall, by written affirmation, establish identity and current residence within the precinct at the time of voting.

(C) The ballot of each person who files a change of address at a polling place shall be stamped "special" and placed in a sealed envelope. The outside

of the special ballot envelope shall contain the affirmation signed by the voter attesting to his or her qualifications to vote in the election, the date of birth of the voter, and any other information as the Board deems necessary for its chief registration official to determine that the individual is qualified to have the ballot counted. The official in charge of the polling place shall provide the voter with written notification of the means by which the voter can determine from the Board whether the ballot will be counted and of the voter's right of appeal pursuant to § 1-1001.09(e) should the chief registration official determine that the voter is not qualified to vote in the election.

(5)(A) As soon as practicable after the election, the Board shall mail each registered voter who filed a change of address at the polls on election day a nonforwardable address confirmation notice to the address provided in the written affirmation.

(B) Where the United States Postal Service returns the address confirmation notification as undeliverable or indicating that the registrant does not live at the address provided in the written affirmation, the Board shall notify the Corporation Counsel of the District of Columbia.

(6) Each individual who has not previously voted in a federal election in the District and who registers to vote by mail shall present, either at the time of registration, at the polling place, or when voting by mail, a copy of a current and valid government photo identification or a copy of a current utility bill, bank statement, government check, or pay check that shows the name and address of the voter. Individuals who fail to present this identification shall vote by special ballot. This paragraph shall not apply to:

(A) Individuals whose registration application includes a driver's license number or at least the last 4 digits of the individual's social security number, and matches an existing identification record bearing the same number, name, and date of birth as the application; or

(B) Individuals entitled to vote otherwise than in person under federal law.

(j)(1) The Board shall develop a systematic program to maintain the voter roll and keep it current. This program shall include the following:

(A) In January of each odd-numbered year, the Board shall confirm the address of each registered voter who did not confirm his or her address through the voting process or file a change of address at the polls in the preceding general election by mailing a first class nonforwardable postcard to the address listed on the Board's records.

(B)(i) If the United States Postal Service returns the notice and provides a new address for the registrant within the District of Columbia, the Board shall change the address on its records and mail to both the old and new addresses of the registrant a forwardable notification that the address has been changed to reflect the information obtained from the United States Postal Service.

(ii) If the United States Postal Service returns the notice and provides a new address outside the District of Columbia, the Board shall mail a forwardable notice to both the old and new address informing the registrant how to register to vote in the new jurisdiction or correct the address information obtained from the United States Postal Service.

(iii) If the United States Postal Service returns the notice to the Board as undeliverable, the Board shall mail to the registrant at his or her last known address the notice prescribed in sub-subparagraph (ii) of this subparagraph.

(C) The notices prescribed in subparagraphs (A) and (B) of this paragraph shall include a pre-addressed and postage paid return notification postcard to enable the registrant to correct any address information obtained from the United States Postal Service. In addition, the notices shall include the following information:

“If you did not change your residence, or changed residence but remained in the District, you should return the card not later than the deadline for mail registration for the next federal election (the 30th day before the election). If the card is not returned, affirmation of your address may be required before you are permitted to vote in any election during the period beginning on the date of the notice and ending on the day after the date of the second general election for federal office that occurs after the date of the notice, and if you do not vote in an election during that period, your name will be removed from the list of eligible voters.”

(D) The Board may, in addition, utilize information obtained from the United States Postal Service, the National Change of Address System (“NCOA”), the Bureau of Motor Vehicle Services (subject to the provisions of subsection (c)(1)(D) of this section, which identifies registrants who have moved from the addresses listed on the Board’s records. In these cases the Board shall issue the notices prescribed in subparagraph (B) of this paragraph.

(2)(A) Upon mailing of the notice required in paragraph (1)(B) of this subsection, the registrant’s voter registration status shall be designated as inactive on the voter roll.

(B) Where a registered voter is designated as inactive on the voter roll pursuant to subparagraph (A) of this paragraph and the registrant provides the Board with a current residence address, or votes in any election in accordance with subsection (i) of this section by the date established in subparagraph (C) of this paragraph, the inactive designation shall be removed from the registrant’s record.

(C) Where the Board mails the notice required in paragraph (1)(B) of this subsection, and the registrant fails to respond to the notice and fails to vote during the period beginning on the date the notice was mailed and ending on the day after the second general election for federal office, the registrant’s name shall be removed from the voter roll.

(3) As part of its systematic voter roll maintenance program, the Board may, by regulation, develop additional procedures to identify and remove from the voter roll registrants who are deceased and no notification was received from the Bureau of Vital Statistics, who have moved from the District and no notification was received from the registrant or the United States Postal Service, or who otherwise no longer meets the qualifications as duly registered voters.

(4) Any systematic program conducted by the Board to identify individuals who do not reside at the address listed on the Board’s records shall be

completed not less than the 90th day immediately preceding any primary, general, or District-wide special election.

(5) The voter registrations of individuals whose registrations are designated as inactive on the voter roll, pursuant to paragraph (2) of this subsection:

(A) Shall not be utilized in the calculation of the number of signatures required for qualification of candidate, initiative, referendum, and recall petitions;

(B) Shall not be counted as valid in the verification of signatures pursuant to §§ 1-1001.08(o), 1-1001.16(o), and 1-1001.17(k);

(C) Shall not be included where the Board is required:

(i) To provide lists of registered voters at the polls on election day or for public inspection;

(ii) To calculate or report the number of registered voters for an administrative purpose; or

(iii) For the issuance of information mailings; and

(D) Their names shall not be sold by the Board either in hard copy form or electronic media, except upon specific request of the purchaser and the fact that the registrations are designated as inactive is made known to the purchaser.

(k)(1) The Board shall cancel a voter registration upon receipt of a signed request from the registrant, upon notification of the death of a registrant, upon notification of a registrant's incarceration for conviction of a felony, upon notification that the registrant has registered to vote in another jurisdiction, or for any other reason specifically authorized in this subchapter.

(2) The Board shall request at least monthly, and the Mayor shall furnish, the name, address, and date of birth, if known, of each District resident 18 years of age and over reported deceased within the District, together with the name and address of each District resident who has been reported deceased by other jurisdictions since the date of the previous report.

(3) The Board shall request at least monthly, and the Superior Court of the District of Columbia shall furnish, the name and address of each person incarcerated as a result of a felony conviction since the date of the previous report, and the former and present names and address of each person whose name has been changed by decree or order of the Court since the date of the previous report.

(4) The Board shall request from the United States District Court for the District of Columbia, at least monthly, the name and address of each person incarcerated as a result of a felony conviction since the date of the previous report.

(5) Any individual whose registration has been cancelled shall not be permitted to vote except by re-registration as provided in this section.

(l) Before May 1, 2010, the Board shall submit to the Council a report indicating the feasibility of implementing automatic voter registration in the District.

(Aug. 12, 1955, 69 Stat. 700, ch. 862, § 7; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1 (8, 9, 10, 11); July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Apr. 22,

1968, 82 Stat. 103, Pub. L. 90-292, § 4(4); July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Dec. 23, 1971, 85 Stat. 790, Pub. L. 92-220, § 1(8), (30), (31); 1973 Ed., § 1-1107; Dec. 16, 1975, D.C. Law 1-37, § 2(3)-(5), 22 DCR 3426; Apr. 23, 1977, D.C. Law 1-126, title III, § 301(g)-(i), title IV, § 402, 24 DCR 2372; Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 2(e), (n), (p), (q), 29 DCR 458; July 1, 1982, D.C. Law 4-120, § 2(b), 29 DCR 2064; Aug. 2, 1983, D.C. Law 5-17, § 5(c), 30 DCR 3196; Mar. 16, 1988, D.C. Law 7-92, § 3(d)-(g), 35 DCR 716; Aug. 17, 1991, D.C. Law 9-32, § 2, 38 DCR 4220; Mar. 11, 1992, D.C. Law 9-75, § 2(b), 39 DCR 310; Feb. 5, 1994, D.C. Law 10-68, § 7(a), 40 DCR 6311; Sept. 22, 1994, D.C. Law 10-173, § 2(b), 41 DCR 5154; July 25, 1995, D.C. Law 11-30, § 2(b), 42 DCR 1547; Apr. 18, 1996, D.C. Law 11-110, § 5(a), 43 DCR 530; Apr. 12, 2000, D.C. Law 13-91, § 123(b), 47 DCR 520; Apr. 3, 2001, D.C. Law 13-251, § 2(a), 48 DCR 668; Dec. 7, 2004, D.C. Law 15-218, § 2(c), 51 DCR 9132; Apr. 7, 2006, D.C. Law 16-91, § 127(b), 52 DCR 10637; Mar. 2, 2007, D.C. Law 16-191, § 48(l), 53 DCR 6794; Oct. 21, 2008, D.C. Law 17-236, § 2, 55 DCR 9019; Feb. 4, 2010, D.C. Law 18-103, § 2(e), 56 DCR 9169; May 31, 2012, D.C. Law 19-131, § 2(a), 59 DCR 2389.)

Cross references. — Advisory Neighborhood Commissions, “registered qualified elector” defined, see § 1-309.09.

Section references. — This section is referred to in §§ 1-1001.02, 1-1001.05, 1-1001.08, and 1-1001.14.

Prior Codifications. — 1981 Ed., § 1-1311. 1973 Ed., § 1-1107.

Effect of amendments. — D.C. Law 13-91 validated a previously made technical correction in par. (2) of subsec. (j).

D.C. Law 13-251 rewrote subsec. (e)(5)(A) which had read:

“(5)(A) Any duly registered voter may file with the Board objections to the registration of any person whom he or she has reason to believe is fictitious, deceased, a disqualified person, or otherwise ineligible to vote (except with respect to a change of residence), or file a request for the addition of any person whose name he or she has reason to believe has been erroneously omitted or cancelled from the voter roll. Application for the correction of the voter roll or the challenge of the right to vote of any person named on the voter roll shall be in writing and include any evidence in support of the challenge that the registrant is not qualified to be a registered voter. The challenge or application shall be filed with the Board not later than 90 days before the date of any election held under this subchapter.”

D.C. Law 15-218 added subsec. (a-1), subpar. (K) of par. (c)(1), and par. (6) of subsec. (i); in par. (1) of subsec. (b), substituted “Help America Vote Act of 2002” for “Federal Election Commission”; and, in par. (2) of subsec. (b), substituted “approved by the Board and shall

meet the requirements of the National Voter Registration Act of 1993, approved May 20, 1993 (107 Stat. 77; 42 U.S.C. § 1973gg et seq.) and the Help America Vote Act of 2002” for “approved by the Board” in the first sentence, and added the second sentence.

D.C. Law 16-91, in pars. (b)(2) and (i)(6), validated previously made technical corrections.

D.C. Law 16-191, in subsecs. (b)(2) and (i)(6), validated previously made technical corrections.

D.C. Law 17-236 added subsecs. (a-2), (b)(4); and, in subsec. (e)(2), inserted “The voter registration notification shall state that the applicant shall not vote before her or his 18th birthday.”

D.C. Law 18-103 rewrote subsecs. (a-2), (b)(4), and (g); in subsec. (d)(1)(B), substituted “the Department of Parks and Recreation, the Department of Corrections, the Department of Youth and Rehabilitative Services, and the Office of Aging” for “the Senior Citizens Branch of the Department of Recreation and Parks and the Office of Aging”; and added subsec. (l).

D.C. Law 19-131, in subsec. (g)(1), substituted “4:45 P.M. on the 30th day preceding any election, or such time on that day as the Board’s office remains open to receive registrations,” for “5:00 p.m. on the 31st day preceding any election”; in subsec. (g)(5), substituted “law, District law, or Board regulation. Each individual who registers on Election Day shall cast a special ballot, subject to the Board’s verification of residence.” for “law; provided, that, for each election occurring before December 31, 2010, the individual shall cast a special ballot, sub-

ject to the Board's verification of residence; provided further, that for each election occurring after December 31, 2010, if the individual does not present a government-issued and valid photo identification card showing the individual's address, the individual shall cast a special ballot, subject to the Board's verification of residence"; and, in subsec. (g)(7)(A)(i), substituted "register and vote in the election, but" for "register but".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of Help America Vote Temporary Amendment Act of 2004 (D.C. Law 15-120, March 30, 2004, law notification 51 DCR 3807).

For temporary (225 day) amendment of section, see § 2 of Student Voter Registration Temporary Amendment Act of 2008 (D.C. Law 17-188, July 18, 2008, law notification 55 DCR 8710).

Section 2(a) of D.C. Law 19-101, in subsec. (g)(1), substituted "4:45 P.M. on the 30th day, or such time on that day as the Board's office remains open to receive registrations for "5:00 p.m. on the 31st day"; in subsec. (g)(5), substituted "law, District law, or Board regulation. Each individual who registers on Election Day shall cast a special ballot, subject to the Board's verification of residence." for "law; provided, that, for each election occurring before December 31, 2010, the individual shall cast a special ballot, subject to the Board's verification of residence; provided further, that for each election occurring after December 31, 2010, if the individual does not present a government-issued and valid photo identification card showing the individual's address, the individual shall cast a special ballot, subject to the Board's verification of residence."; and, in subsec. (g)(7)(A)(i), substituted "register and vote in the election, but" for "register but".

Section 4(b) of D.C. Law 19-101 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(c) of Help American Vote Emergency Amendment Act of 2003 (D.C. Act 15-283, December 18, 2003, 51 DCR 197).

For temporary (90 day) amendment of section, see § 2(c) of Help America Vote Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-405, March 18, 2004, 51 DCR 3650).

For temporary (90 day) amendment of section, see § 2(c) of Help America Vote Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-658, December 29, 2004, 52 DCR 492).

For temporary (90 day) amendment of section, see § 2 of Student Voter Registration Emergency Amendment Act of 2008 (D.C. Act 17-350, April 17, 2008, 55 DCR 5364).

For temporary (90 day) amendment of section, see § 2(e) of Omnibus Election Reform Emergency Amendment Act of 2009 (D.C. Act 18-236, November 30, 2009, 56 DCR 9154).

For temporary (90 day) amendment of section, see § 2(a) of Board of Elections and Ethics Electoral Process Improvement Emergency Amendment Act of 2011 (D.C. Act 19-266, January 3, 2012, 59 DCR 207).

Legislative history of Law 1-37. — For legislative history of D.C. Law 1-37, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 4-120. — For legislative history of D.C. Law 4-120, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 5-17. — For legislative history of D.C. Law 5-17, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 7-92. — For legislative history of D.C. Law 7-92, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 9-32. — Law 9-32 was introduced in Council and assigned Bill No. 9-191, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-59 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-75. — For legislative history of D.C. Law 9-75, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 10-68. — Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 10-173. — For legislative history of D.C. Law 10-173, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 11-30. — For legislative history of D.C. Law 11-30, see His-

torical and Statutory Notes following § 1-1001.02.

Legislative history of Law 11-110. — Law 11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-1001.02.

Legislative history of Law 13-251. — Law 13-251, the “Election Day Challenge Procedures Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-445, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 22, 2000, it was assigned Act No. 13-538 and transmitted to both Houses of Congress for its review. D.C. Law 13-251 became effective on April 3, 2001.

Legislative history of Law 15-218. — For D.C. Law 15-218, see notes following § 1-1001.02

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Legislative history of Law 16-191. — Law 16-191, the “Technical Amendments Act of 2006”, was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No.

16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

Legislative history of Law 17-236. — Law 17-236, the “Student Voter Registration Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-702 which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on July 1, 2008, and July 15, 2008, respectively. Signed by the Mayor on July 28, 2008, it was assigned Act No. 17-477 and transmitted to both Houses of Congress for its review. D.C. Law 17-236 became effective on October 21, 2008.

Legislative history of Law 18-103. — For Law 18-103, see notes following § 1-1001.02.

Legislative history of Law 19-131. — Law 19-131, the “Board of Elections and Ethics Electoral Process Improvement Amendment Act of 2012”, was introduced in Council and assigned Bill No. 19-479, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 7, 2011, and March 6, 2012, respectively. Signed by the Mayor on March 19, 2012, it was assigned Act No. 19-328 and transmitted to both Houses of Congress for its review. D.C. Law 19-131 became effective on May 31, 2012.

References in text. — Pursuant to Mayor’s Order 2000-20, the agency formerly known as the Department of Recreation and Parks shall be known as the Department of Parks and Recreation.

The National Voter Registration Act, referred to in (b) and (d), is Pub. L. 103-31, May 20, 1993, 107 Stat 77 which is codified primarily as 42 U.S.C. §§ 1973gg et seq.

CASE NOTES

ANALYSIS

Challenges to voters.
Election contests.
Registration of voters.
—Compelling registration.
—Correction of lists, registration of voters.
—In general.
Residence.

Challenges to voters.

Voter who claims that weight of his vote is being diluted or impaired by ballots of others who are not legally entitled to vote has right to challenge their right of suffrage, and to bring appropriate proceedings to prevent their votes from being cast or counted. *Morgan v. Katzenbach*, 247 F. Supp. 196, 1965 U.S. Dist. LEXIS 9193 (D.D.C.1965), reversed by 384 U.S.

641, 86 S. Ct. 1717, 16 L. Ed. 2d 828, 1966 U.S. LEXIS 1337 (1966).

Failure to challenge all voters who have been registered more than 90 days before election does not foreclose challenge to same voters later at the polls, when time may have yielded additional information useful to challenge. *D.C. Code 1981, §§ 1-1311, 1-1313. Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 1997 D.C. App. LEXIS 39 (1997).

Election contests.

Where residents challenged Advisory Neighborhood Commission (ANC) elections on ground that ineligible college students voted, special master appointed to make findings of fact and conclusions of law reasonably structured proceeding so as to provide for individualized hearings and submission of evidence gathered post-election day only in the event

that the residents were first able to rebut, at a predicate hearing and with the evidence they had on election day, the registered students' presumptive eligibility to vote. D.C. Code 1981, § 1-1311(a). *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 717 A.2d 891, 1998 D.C. App. LEXIS 174 (1998).

Registration of voters.

— Compelling registration.

Where the time is fixed by statute for the hearing of applications to the board of judges of elections to add to or omit from the list of voters the names of particular persons, a petition for a writ of mandamus to compel the board to register the petitioner's name will be dismissed as premature when the board has not yet held its session for hearing such applications. *Alden v. Hinton*, 6 D.C. 217 (D.C.Sup. 1867).

— Correction of lists, registration of voters.

Where, on a return to an application for mandamus against the board of registration to compel the striking of certain names from the list of voters, it appears that the board has fully exercised the judgment and discretion intrusted to it by the law in determining the qualifications of applicants, and that the board is satisfied that the persons registered are residents of the district, and it does not appear that any fraud or corruption was practiced by the board, the court will not go behind the answer to take proof whether the persons registered were voters. *Alden v. Hinton*, 6 D.C. 217 (D.C.Sup. 1867).

— In general.

Statute allowing District of Columbia election board to take necessary and appropriate action to actively locate, identify, and register qualified voters allowed Board to take steps related to protecting potential voters from being improperly dissuaded from exercising their franchise. D.C. Code 1981, § 1-1306(a)(2). *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 946 F. Supp. 80, 1996 U.S. Dist. LEXIS 17972 (1996).

Voter registration form sufficiently complied with statute requiring that registrant be resident of District of Columbia, although voter declaration box included statement only that registrant "lived" in District, as form clearly stated in instructions that registrant must be resident, and declaration included affirmation that registrant did not claim right to vote anywhere outside District. D.C. Code 1981, §§ 1-1302(2), 1-1311(a). *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 1997 D.C. App. LEXIS 39 (1997).

Election officials may take reasonable look behind declaration of residency on voter's registration to determine whether actual facts and

circumstances confirm voter's declaration. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 1997 D.C. App. LEXIS 39 (1997).

Board of Elections and Ethics did not have affirmative responsibility to make preregistration effort to scrutinize registration forms of university students to screen out nonresident, unqualified applicants. D.C. Code 1981, §§ 1-1302(16)(E), 1-1311(a). *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 1997 D.C. App. LEXIS 39 (1997).

Signed voting registration form creates presumption that registrant is qualified elector. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 1997 D.C. App. LEXIS 39 (1997).

The registry of a party's name, and proof of his having paid the requisite taxes, are not conclusive of his right to vote; but the commissioners may lawfully go behind the registry and tax receipt, and inquire as to his citizenship and residence, if they honestly doubt either of these. *Alden v. Hinton*, 6 D.C. 217 (D.C.Sup. 1867).

Residence.

Student directories issued by college, which included so-called "permanent addresses" for students, were insufficient to overcome presumption that college students who had duly registered to vote resided in District of Columbia, so as to be eligible to vote. D.C. Code 1981, § 1-1311(a). *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 717 A.2d 891, 1998 D.C. App. LEXIS 174 (1998).

Presentation of out-of-state driver's licenses by college students, upon being asked for identification at polls, was insufficient to overcome presumption that college students who had duly registered to vote resided in District of Columbia, so as to be eligible to vote. D.C. Code 1981, § 1-1311(a). *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 717 A.2d 891, 1998 D.C. App. LEXIS 174 (1998).

Possibility that university student may intend to leave District of Columbia after graduation to become resident elsewhere does not necessarily affect student's present intent to become District resident for voting registration purposes. D.C. Code 1981, § 1-1302(16)(A). *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 1997 D.C. App. LEXIS 39 (1997).

Voter who moved out of his old residence on April 30, 1995, even though, according to his declaration, he had right to remain there until May 4, 1995, and voted in election held on May 2, 1995 in ward in which his former residence was located did not vote illegally, where election was held on date on which voter was, for practical purposes, between two residences, and there was no suggestion that voter voted

twice and vote totals would have been same if voter had cast his vote in different precinct. D.C. Code 1981, §§ 1-1311(i)(1), 1-1315(b); D.C. Mun.Reg. title 3, § 710.6. *Allen v. District of Columbia Bd. of Elections & Ethics*, 663 A.2d 489, 1995 D.C. App. LEXIS 158 (1995).

Soldiers of the United States army do not acquire or lose their citizenship by reason of being stationed, in the line of duty, at any particular place, no matter how long their occupancy of such place may continue. *Mead v. Carrol*, 6 D.C. 338 (D.C.Sup. 1868).

§ 1-1001.08. Qualifications of candidates and electors; nomination and election of Delegate, Mayor, Chairman, members of Council, and members of Board of Education; petition requirements; arrangement of ballot.

(a)(1) Each candidate for election to the office of national committeeman or alternate, or national committeewoman or alternate, and for election as a member or official designated for election at large under paragraph (4) of § 1-1001.01, shall be a qualified elector registered under § 1-1001.07 who has been nominated for such office, or for election as such member or official, by a nominating petition:

(A) Signed by not less than 500, or 1%, whichever is less, of the qualified electors registered under such § 1-1001.07, who are of the same political party as the candidate; and

(B) Filed with the Board not later than the 90th day before the date of the election held for such office, member, or official.

(2) In the case of a nominating petition for a candidate for election as a member or official designated for election from a ward under paragraph (4) of § 1-1001.01, such petition shall be prepared and filed in the same manner as a petition prepared and filed by a candidate under paragraph (1) of this subsection and signed by 100, or 1%, whichever is less, of the qualified electors residing in such ward, registered under § 1-1001.07, who are of the same political party as the candidate.

(b)(1)(A) No person shall hold elected office pursuant to this section unless he or she has been a bona fide resident of the District of Columbia continuously since the beginning of the 90-day period ending on the date of the next election, and is a qualified elector registered under § 1-1001.07.

(B) Repealed.

(C) Repealed.

(2) Only registered, qualified electors of the District of Columbia are authorized to circulate nominating petitions of candidates for elected office pursuant to this subchapter. The Board shall consider invalid the signatures on any petition sheet which was circulated by a person who, at the time of circulation, was not a registered, qualified elector of the District of Columbia.

(3) All signatures on a petition shall be made by the person whose signature it purports to be and not by any other person. Each petition shall contain an affidavit, made under penalty of perjury, in a form to be determined by the Board and signed by the circulator of that petition which shall state that the circulator is a registered voter and has:

(A) Personally circulated the petition;

(B) Personally witnessed each person sign the petition; and

(C) Inquired from each signer whether he or she is a registered voter in the same party as the candidate and, where applicable, whether the signer is registered in and a resident of the ward from which the candidate seeks election.

(4) Any circulator who knowingly and willfully violates any provisions of this section, or any regulations promulgated pursuant to this section, shall upon conviction be subject to a fine of not more than \$10,000, or imprisonment for not more than 6 months, or both. Each occurrence of a violation of this section shall constitute a separate offense. Violations of this section shall be prosecuted in the name of the District of Columbia by the Corporation Counsel of the District of Columbia.

(c)(1) In such election of officials referred to in paragraph (1) of § 1-1001.01, and in each election of officials designated for election at large pursuant to paragraph (4) of § 1-1001.01, the Board shall arrange the ballot of each party to enable the registered voters of such party to vote separately or by slate for each official duly qualified and nominated for election to such office.

(2) In each election of officials designated, pursuant to paragraph (4) of § 1-1001.01, for election from a ward, the Board shall arrange the ballot of each party to enable the registered voters of such party, residing in such ward, to vote separately or by slate for each official duly qualified and nominated from such ward for election to such office from such ward.

(d) Each political party which had in the next preceding election year at least 7,500 votes cast in the general election for a candidate of the party to the office of Delegate, Mayor, Chairman of the Council, or member of the Council, shall be entitled to elect candidates for presidential electors, provided that the party has met all deadlines set out in this subchapter or by regulation for the submission of a party plan for the election. The executive committee of the organization recognized by the national committee of each such party as the official organization of that party in the District of Columbia shall nominate by appropriate means the presidential electors for that party. Nominations shall be made by message to the Board on or before September 1st next preceding a presidential election.

(e) The names of the candidates of each political party for President and Vice President shall be placed on the ballot under the title and device, if any, of that party as designated by the duly authorized committee of the organization recognized by the national committee of that party as the official organization of that party in the District. The form of the ballot shall be determined by that Board. The position on the ballot of names of candidates for President and Vice President shall be determined by lot. The names of persons nominated as candidates for electors of President and Vice President shall not appear on the ballot.

(f) A political party which does not qualify under subsection (d) of this section may have the names of its candidates for President and Vice President of the United States printed on the general election ballot provided a petition nominating the appropriate number of candidates for presidential electors signed by at least 1 per centum of registered qualified electors of the District

of Columbia, as shown by the records of the Board as of the 144th day before the date of the presidential election, is presented to the Board on or before the 90th day before the date of the presidential election.

(g) No person may be elected to the office of elector of President and Vice President pursuant to this subchapter unless: (1) He or she is a registered voter in the District; and (2) He or she has been a bona fide resident of the District for a period of 3 years immediately preceding the date of the presidential election. Each person elected as elector of President and Vice President shall, in the presence of the Board, take an oath or solemnly affirm that he or she will vote for the candidates of the party he or she has been nominated to represent, and it shall be his or her duty to vote in such manner in the electoral college.

(h)(1)(A) The Delegate, Mayor, Chairman of the Council of the District of Columbia and the 4 at-large members of the Council shall be elected by the registered qualified electors of the District of Columbia in a general election. Each candidate for the office of Delegate, Mayor, Chairman of the Council of the District of Columbia, and at-large members of the Council in any general election shall, except as otherwise provided in subsection (j) of this section and § 1-1001.10(d), have been elected by the registered qualified electors of the District as such candidate by the next preceding primary election.

(B)(i) A member of the office of Council (other than the Chairman and any member elected at large) shall be elected in a general election by the registered qualified electors of the respective ward of the District from which the individual seeking such office was elected as a candidate for such office as provided in sub-subparagraph (ii) of this subparagraph.

(ii) Each candidate for the office of member of the Council (other than Chairman and at-large members) shall, except as otherwise provided in subsection (j) of this section and § 1-1001.10(d), have been elected as such a candidate, by the registered qualified electors of the ward of the District from which such individual was nominated, at the next preceding primary election to fill such office within that ward.

(2) The nomination and election of any individual to the office of Delegate, Mayor, Chairman of the Council and member of the Council shall be governed by the provisions of this subchapter. No political party shall be qualified to hold a primary election to select candidates for election to any such office in a general election unless, in the next preceding election year, at least 7,500 votes were cast in the general election for a candidate of such party for any such office or for its candidates for electors of President and Vice President.

(i)(1) Each individual in a primary election for candidate for the office of Delegate, Mayor, Chairman of the Council, or at-large member of the Council shall be nominated for any such office by a petition:

(A) Filed with the Board not later than 90 days before the date of such primary election; and

(B) Signed by at least 2,000 registered qualified electors of the same political party as the nominee, or by 1 per centum of the duly registered members of such political party, whichever is less, as shown by the records of the Board as of the 144th day before the date of such election.

(2) Each individual in a primary election for candidate for the office of member of the Council (other than Chairman and at-large members) shall be nominated for such office by a petition filed with the Board not later than 90 days before the date of such primary election, and signed by at least 250 persons, or by 1 per centum of persons (whichever is less, in the ward from which such individual seeks election) who are duly registered in such ward under § 1-1001.07 and who are of the same political party as the nominee.

(3) For the purpose of computing nominating petition signature requirements, the Board shall by noon on the 144th day preceding the election post and make available the exact number of qualified registered electors in the District by party, ward, and precinct, as provided in this subsection. The Board shall make available for public inspection, in the office of the Board, the entire list of registered electors upon which such count was based. Such list shall be retained by the Board until the period for circulating, filing, and challenging petitions has ended.

(4) A nominating petition for a candidate in a primary election for any such office may not be circulated for signature before the 144th day preceding the date of such election and may not be filed with the Board before the 115th day preceding such date. The Board may prescribe rules with respect to the preparation and presentation of nominating petitions. The Board shall arrange the ballot of each political party in each such primary election as to enable a voter of such party to vote for nominated candidates of that party.

(j)(1) A duly qualified candidate for the office of Delegate, Mayor, Chairman of the Council, or member of the Council, may, subject to the provisions of this subsection, be nominated directly as such a candidate for election for such office (including any such election to be held to fill a vacancy). Such person shall be nominated by petition: (A) Filed with the Board not less than 90 days before the date of such general election; and (B) In the case of a person who is a candidate for the office of member of the Council (other than the Chairman or an at-large member), signed by 500 voters who are duly registered under § 1-1001.07 in the ward from which the candidate seeks election; and in the case of a person who is a candidate for the office of Delegate, Mayor, Chairman of the Council, or at-large member of the Council, signed by duly registered voters equal in number to 1½ per centum of the total number of registered voters in the District, as shown by the records of the Board as of 144 days before the date of such election, or by 3,000 persons duly registered under § 1-1001.07, whichever is less. No signatures on such a petition may be counted which have been made on such petition more than 123 days before the date of such election.

(2) Nominations under this subsection for candidates for election in a general election to any office referred to in paragraph (1) of this subsection shall be of no force and effect with respect to any person whose name has appeared on the ballot of a primary election for that office held within 8 months before the date of such general election.

(3) No person shall be nominated directly as a candidate in any general election for the office of Delegate, Mayor, Chairman of the Council, member of the Council, United States Senator, or United States Representative who is

registered to vote as affiliated with a party qualified to conduct a primary election.

(k)(1) In each general election for the office of member of the Council (other than the office of the Chairman or an at-large member), the Board shall arrange the ballots in each ward to enable a voter registered in that ward to vote for any 1 candidate who:

(A) Has been duly elected by any political party in the next preceding primary election for such office from such ward;

(B) Has been duly nominated to fill a vacancy in such office in such ward pursuant to § 1-1001.10(d); or

(C) Has been nominated directly as a candidate for such office in such ward under subsection (j) of this section.

(2) In each general election for the office of Chairman and member of the Council at large, the Board shall arrange the ballots to enable a registered qualified elector to vote for as many candidates for election as members at large as there are members at large to be elected in such election, including the Chairman. Such candidates shall be only those persons who:

(A) Have been duly elected by any political party in the next preceding primary election for such office;

(B) Have been duly nominated to fill vacancies in such office pursuant to § 1-1001.10(d); or

(C) Have been nominated directly as a candidate under subsection (j) of this section.

(3) In each general election for the office of Delegate and Mayor, the Board shall arrange the ballots to enable a registered qualified elector to vote for any 1 of the candidates for any such office who:

(A) Has been duly elected by any political party in the next preceding primary election for such office;

(B) Has been duly nominated to fill a vacancy in such office pursuant to § 1-1001.10(d); or

(C) Has been nominated directly as a candidate under subsection (j) of this section.

(l)(1) Designation of offices of local party committees to be filled by election pursuant to paragraph (4) of § 1-1001.01 shall be effected, in accordance with the provision of this subsection, by written communication signed by the chairman of such committee and filed with the Board not later than 180 days before the date of such election.

(2) The notification shall specify separately:

(A) A comprehensive plan for the scheduled election;

(B) The titles of the offices and the total number of members to be elected at large, if any;

(C) The title of the offices and the total number of members to be elected by ward, if any; and

(D) The procedures to be followed in nominating and electing these members.

(3) Repealed.

(m) The election of the members of the Board of Education shall be conducted on a nonpartisan basis and in accordance with this subchapter.

(n) Each candidate in a general or special election for member of the Board of Education shall be nominated for such office by a nominating petition: (A) Filed with the Board not later than the 90th calendar day before the date of such general or special election; and (B) signed by at least 200 qualified electors who are duly registered under § 1-1001.07, who reside in the school district or ward from which the candidate seeks election, or in the case of a candidate running at large, signed by at least 1,000 of the qualified electors in the District of Columbia registered under such § 1-1001.07. A nominating petition for a candidate in a general or special election for member of the Board of Education may not be circulated for signatures before the 144th day preceding the date of such election and may not be filed with the Board before the 115th day preceding such date. In a general or special election for members of the Board of Education, the Board shall arrange the ballot for each school district or ward to enable a voter registered in that school district or ward to vote for any 1 candidate duly nominated to be elected to such office from such school district or ward, and to vote for as many candidates duly nominated for election at large to such office as there are Board of Education members to be elected at large in such election.

(o)(1) The Board is authorized to accept any nominating petition for a candidate for any office as bona fide with respect to the qualifications of the signatures thereto if the original or facsimile thereof has been posted in a suitable public place for a 10-day period beginning on the third day after the filing deadline for nominating petitions for the office. Any registered qualified elector may within the 10-day period challenge the validity of any petition by written statement signed by the challenger and filed with the Board and specifying concisely the alleged defects in the petition. A copy of the challenge shall be sent by the Board promptly to the person designated for the purpose in the nominating petition. In a special election to fill a vacancy in an Advisory Neighborhood Commission single-member district, the period prescribed in this paragraph for posting and challenge shall be 5 days, excluding weekends and holidays.

(2) The Board shall receive evidence in support of and in opposition to the challenge and shall determine the validity of the challenged nominating petition not more than 20 days after the challenge has been filed. Within 3 days after announcement of the determination of the Board with respect to the validity of the nominating petition, either the challenger or any person named in the challenged petition as a nominee may apply to the District of Columbia Court of Appeals for a review of the reasonableness of such determination. The Court shall expedite consideration of the matter and the decision of such Court shall be final and not appealable.

(2A) Repealed.

(3) For the purpose of verifying a signature on any petition filed pursuant to this section, the Board shall first determine if the address on the petition is the same as the address shown of the signer's voter registration record. If the address is different than the address which appears on the signer's registration record, the address shall be deemed valid if:

(A) The signer's current address is within the single member district for an Advisory Neighborhood Commission election, within the school district for

a school board election, within the ward for a ward-wide election, or within the District of Columbia for an at-large election; and

(B) The signer files a change of address form with the Board during the first 10 days of the period designated for resolving challenges to petitions.

(p) In any election, the order in which the names of the candidates for office appear on the ballot shall be determined by lot, upon a date or dates and under regulations prescribed by the Board.

(q) Any petition required to be filed under this subchapter by a particular date must be filed no later than 5:00 p.m. on such date.

(r)(1) In any primary, general, or special election held in the District of Columbia to nominate or elect candidates to public office, a voter may cast a write-in vote for a candidate other than those who have qualified to appear on the ballot.

(2) To be eligible to receive the nomination of a political party for public office, a write-in candidate shall be a duly registered member of the party nominated and shall meet all the other qualifications required for election to the office and shall declare his or her candidacy not later than 4:45 p.m. on the third day immediately following the date of the election on a form or forms prescribed by the Board.

(3) To be eligible for election to public office, a write-in candidate shall be a duly registered elector and shall meet all of the other qualifications required for election to the office and shall declare his or her candidacy not later than 4:45 p.m. on the seventh day immediately following the date of the election in which he or she was a candidate on a form or forms prescribed by the Board.

(4) In party office elections, write-in voting provisions may also be subject to the party rules.

(s) The Board shall submit to the Mayor and Council a feasibility study of mail-ballot voting procedures, within 6 months after October 21, 2000. The study shall outline the advantages and disadvantages of mail-ballot procedures and recommend whether mail-ballot procedures should be implemented in District of Columbia elections. The study shall include an analysis of the following issues and topics that the Board deems appropriate:

- (1) Administration and logistics;
- (2) Ballot integrity and electoral fairness;
- (3) Voter turnout;
- (4) Cost;
- (5) Applicability to special elections and regularly scheduled elections;

and

(6) The experiences of other jurisdictions that have used mail-ballot procedures.

(Aug. 12, 1955, 69 Stat. 701, ch. 682, § 8; Oct. 4, 1961, 75 Stat. 818, Pub. L. 87-389, § 1 (12, 13); Apr. 22, 1968, 82 Stat. 103, Pub. L. 90-292, § 4(5); Sept. 22, 1970, 84 Stat. 849, Pub. L. 91-405, title II, §§ 203(b), 205(b), (e)(2), (f); Dec. 23, 1971, 85 Stat. 203(b), 205(b), (e)(2), (f); Dec. 23, 1971, 85 Stat. 790, Pub. L. 92-220, § 1(9)-(16), (32)-(34); Aug. 14, 1973, 87 Stat. 312, Pub. L. 93-92, § 1(8)-(14); Dec. 24, 1973, 87 Stat. 833, Pub. L. 93-198, title VII, § 751(3); Aug.

14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Sept. 2, 1976, D.C. Law 1-79, title I, § 102(7)-(12), 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 301(j), title IV, § 402, 24 DCR 2372; Mar. 16, 1982, D.C. Law 4-88, § 2(f), (o)-(s), 29 DCR 458; July 1, 1982, D.C. Law 4-120, § 2(c), 29 DCR 2064; Aug. 2, 1983, D.C. Law 5-17, § 5(d), 30 DCR 3196; Mar. 16, 1988, D.C. Law 7-92, § 3(h)-(k), 35 DCR 716; Dec. 10, 1991, D.C. Law 9-49, § 2(a), 38 DCR 6572; Mar. 11, 1992, D.C. Law 9-75, § 2(c), 39 DCR 310; Sept. 22, 1994, D.C. Law 10-173, § 2(c), 41 DCR 5154; Mar. 23, 1995, D.C. Law 10-254, § 3, 42 DCR 758; April 5, 2000, D.C. Law 13-78, § 2, 46 DCR 10440; July 18, 2000, D.C. Law 13-149, § 5(a), 47 DCR 4639; Oct. 21, 2000, D.C. Law 13-177, § 2, 47 DCR 6842; Oct. 2, 2001, D.C. Law 14-26, § 2, 48 DCR 6344; Oct. 13, 2001, D.C. Law 14-30, § 2, 48 DCR 7087; Oct. 26, 2001, D.C. Law 14-43, § 2, 48 DCR 7631; Mar. 13, 2004, D.C. Law 15-105, § 24, 51 DCR 881; Dec. 7, 2004, D.C. Law 15-211, § 3, 51 DCR 8805; June 5, 2012, D.C. Law 19-137, § 201(a)(2), 59 DCR 2542.)

Cross references. — Advisory Neighborhood Commissions, elections, see § 1-309.05 et seq.

Section references. — This section is referred to in §§ 1-1001.05, 1-1001.07, 1-1001.09, 1-1001.16, 1-1001.17, and 16-801.

Prior Codifications. — 1981 Ed., § 1-1312. 1973 Ed., § 1-1108.

Effect of amendments. — D.C. Law 13-78, in subsec. (d), rewrote the first sentence, which previously read: "Each political party who has had its candidate elected as President of the United States after January 1, 1950, shall be entitled to nominate candidates for presidential electors."

D.C. Law 13-149 rewrote subsec. (m), which formerly read:

"(1) Except in the case of the 3 members of the Board of Education elected at large, the members of the Board of Education shall be elected by the duly registered voters of the respective wards of the District from which the members have been nominated.

"(2) In the case of the 3 members of the Board of Education elected at large, each such member shall be elected by the duly registered voters of the District.;"

and in subsec. (n), substituted "school district" for "ward" wherever appearing.

Section 7 of D.C. Law 13-149 provided: "This act shall apply upon the effective date of the School Governance Charter Amendment Act of 2000."

D.C. Law 13-177 added subsec. (s).

D.C. Law 14-26, in subsec. (b)(1), repealed pars. (B) and (C) which had read:

"(B) No person shall hold elected office pursuant to this section if he or she, in the case of the Mayor, Council Chairman, Council members, Board of Education members, and any other non-judicial office existing or to be cre-

ated except those of Advisory Neighborhood Commissioner, Delegate from the District of Columbia, Shadow Representative, and Shadow Senator, has held that same office for 2 consecutive terms.

"(C) For purposes of this paragraph:

"(i) Any terms served previous to the adoption of the Term Limits Initiative of 1995 will not count in determining length of service; and

"(ii) Service of more than ½ of a term shall count as a full term."

D.C. Law 14-30, in subsec. (b), rewrote par. (3) and added par. (4). Prior to amendment, par. (3) read as follows: "(3) Any circulator who willfully violates any provision of this section shall, upon conviction thereof, be subject to a fine of not more than \$10,000 or to imprisonment of not more than 6 months, or both. Each occurrence of a violation of this section shall constitute a separate offense. Violation of this section shall be prosecuted in the name of the District of Columbia by the Corporation Counsel of the District of Columbia."

D.C. Law 14-43 rewrote subsec. (o)(3) which had read as follows: "(3) For the purpose of verifying a signature on any petition filed pursuant to this section, the Board shall first determine that the address on the petition is the same as the residence shown on the signer's voter registration record. If the address is different, the signature shall not be counted as valid unless the Board's records show that the person was registered to vote from the address listed on the petition at the time the person signed the petition."

D.C. Law 15-105, in subsec. (o)(3), validated previously made technical corrections.

D.C. Law 15-211 inserted "or ward" following "school district" in subsec. (n).

D.C. Law 19-137, in subsec. (a)(1)(B), substituted "90th day" for "69th day"; in subsec. (f),

substituted “as shown by the records of the Board as of the 144th day before the date of the presidential election, is presented to the Board on or before the 90th day before the date of the presidential election” for “as of July 1st of the year in which the election is to be held is presented to the Board on or before the third Tuesday in August preceding the date of the presidential election”; in subsecs. (i)(1)(A), (2), (j)(1)(A), substituted “90 days” for “69 days”; in subsecs. (i)(1)(B), (3), substituted “144th day” for “123rd day”; in subsec. (i)(4), substituted “144th day preceding the date of such election and may not be filed with the Board before the 115th day” for “123rd day preceding the date of such election and may not be filed with the Board before the 94th day”; in subsec. (j)(1)(B), substituted “144 days” for “123 days”; in subsec. (n), substituted “90th calendar day” for “69th calendar day” and substituted “144th day preceding the date of such election and may not be filed with the Board before the 115th day” for “123rd day preceding the date of such election and may not be filed with the Board before the 94th day”; and, in subsec. (o)(2), substituted “20 days” for “15 days”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the Extension of the Nominating Petition Time Temporary Amendment Act of 2000 (D.C. Law 13-181, October 21, 2000, law notification 47 DCR 8971).

For temporary (225 day) amendment of section, see § 2 of the Presidential Elector Deadline Waiver Temporary Amendment Act of 2003 (D.C. Law 15-36, October 28, 2003, law notification 50 DCR 9489).

For temporary (225 day) amendment of section, see § 2 of the Presidential Elector Deadline Waiver Second Temporary Amendment Act of 2004 (D.C. Law 15-200, December 7, 2004, law notification 52 DCR 444).

For temporary (225 day) amendment of section, see § 3 of the Board of Education Continuity and Transition Temporary Amendment Act of 2004 (D.C. Law 15-204, December 7, 2004, law notification 52 DCR 448).

Section 201(a)(2) of D.C. Law 19-88, in subsec. (a)(1)(B), substituted “90th day” for “69th day”; in subsec. (f), substituted “as shown by the records of the Board as of the 144th day before the date of the presidential election” for “as of July 1st of the year in which the election is to be held is presented to the Board on or before the third Tuesday in August preceding the date of the presidential election”; in subsecs. (i)(1)(A), (2), and (j)(1)(A), substituted “90th day” for “69th day”; in subsecs. (i)(1)(B), (3), substituted “144th day” for “123rd day”; in subsec. (i)(4), substituted “144th day preceding the date of such election and may not be filed

with the Board before the 115th day” for “123rd day preceding the date of such election and may not be filed with the Board before the 94th day”; in subsec. (j)(1)(B), substituted “144 days” for “123 days”; in subsec. (n), substituted “90th calendar day” for “69th calendar day” and substituted “144th day preceding the date of such election and may not be filed with the Board before the 115th day” for “123rd day preceding the date of such election and may not be filed with the Board before the 94th day”; and, in subsec. (o)(2), substituted “20 days” for “15 days”.

Section 302(b) of D.C. Law 19-88 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) amendment of section, see § 2 of the Extension of the Nominating Petition Time Emergency Amendment Act of 2000 (D.C. Act 13-377, July 10, 2000, 47 DCR 5853).

For temporary (90 day) amendment of section, see § 2 of the Extension of the Nominating Petition Time Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-452, November 7, 2000, 47 DCR 9403).

For temporary (90 day) amendment of section, see § 2 of Presidential Elector Deadline Waiver Emergency Amendment Act of 2003 (D.C. Act 15-98, June 20, 2003, 50 DCR 5476).

For temporary (90 day) amendment of section, see § 2 of Presidential Elector Deadline Waiver Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-148, September 22, 2003, 50 DCR 8356).

For temporary (90 day) amendment of section, see § 2 of Presidential Elector Deadline Waiver Second Emergency Amendment Act of 2004 (D.C. Act 15-451, June 23, 2004, 51 DCR 6720).

For temporary (90 day) amendment of section, see § 3 of Board of Education Continuity and Transition Emergency Amendment Act of 2004 (D.C. Act 15-465, June 30, 2004, 51 DCR 6997).

For temporary (90 day) amendment of section, see § 3 of Board of Education Continuity and Transition Congressional Review Emergency Act of 2004 (D.C. Act 15-533, October 4, 2004, 51 DCR 9628).

For temporary (90 day) amendment of section, see § 3 of Board of Education Continuity and Transition Second Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-659, December 29, 2004, 52 DCR 1434).

For temporary (90 day) amendment of section, see § 201(a)(2) of Comprehensive Military and Overseas Voters Accommodation Emergency Act of 2011 (D.C. Act 19-230, November 16, 2011, 58 DCR 9942).

For temporary (90 day) amendment of section, see § 201(a)(2) of Comprehensive Military and Overseas Voters Accommodation Congress-

sional Review Emergency Amendment Act of 2012 (D.C. Act 19-310, February 22, 2012, 59 DCR 1688).

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 4-120. — For legislative history of D.C. Law 4-120, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 5-17. — For legislative history of D.C. Law 5-17, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 7-92. — For legislative history of D.C. Law 7-92, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 9-1. — Law 9-1 was introduced in Council and assigned Bill No. 9-97. The Bill was adopted on first and second readings on February 5, 1991, and March 5, 1991, respectively. Signed by the Mayor on March 15, 1991, it was assigned Act No. 9-6 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-49. — Law 9-49 was introduced in Council and assigned Bill No. 9-110, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 2, 1991, and October 1, 1991, respectively. Signed by the Mayor on October 21, 1991, it was assigned Act No. 9-89 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-75. — For legislative history of D.C. Law 9-75, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 10-173. — For legislative history of D.C. Law 10-173, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 10-254. — Law 10-254, the "Term Limits Initiative of 1995," was submitted to the electors of the District of Columbia as Initiative No. 49. The results of the voting, certified by the Board of Elections and Ethics on November 8, 1994, were 83,865 for the Initiative and 52,116 against the Initiative. It was transmitted to both Houses of Congress for its review on February 7, 1995.

Legislative history of Law 13-78. — Law 13-78, the "Elections Amendment Act of 1999," was introduced in Council and assigned Bill No. 13-142, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 5, 1999, and November 2, 1999, respec-

tively. Signed by the Mayor on November 18, 1999, it was assigned Act No. 13-196 and transmitted to both Houses of Congress for its review. D.C. Law 13-78 became effective on April 5, 2000.

Legislative history of Law 13-149. — Law 13-149, the "School Governance Companion Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-470, which was referred to the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on March 7, 2000, and April 4, 2000, respectively. Signed by the Mayor on April 24, 2000, it was assigned Act No. 13-336 and transmitted to both Houses of Congress for its review. D.C. Law 13-149 became effective on July 18, 2000.

Legislative history of Law 13-177. — Law 13-177, the "Mail Ballot Feasibility Study Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-489, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 26, 2000, and July 11, 2000, respectively. Signed by the Mayor on July 26, 2000, it was assigned Act No. 13-388 and transmitted to both Houses of Congress for its review. D.C. Law 13-177 became effective on October 21, 2000.

Legislative history of Law 14-26. — Law 14-26, the "Consecutive Term Limitation Amendment Act of 2001," was introduced in Council and assigned Bill No. 14-25, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Approved without the signature of the Mayor on June 22, 2001, it was assigned Act No. 14-79 and transmitted to both Houses of Congress for its review. D.C. Law 14-26 became effective on October 2, 2001.

Legislative history of Law 14-30. — Law 14-30, the "Election Petition Penalty Amendment Act of 2001," was introduced in Council and assigned Bill No. 14-53, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 5, 2001, and June 26, 2001, respectively. Signed by the Mayor on July 12, 2001, it was assigned Act No. 14-91 and transmitted to both Houses of Congress for its review. D.C. Law 14-30 became effective on October 13, 2001.

Legislative history of Law 14-43. — Law 14-43, the "Nominating Petitions Signature Amendment Act of 2001," was introduced in Council and assigned Bill No. 14-103, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 5, 2001, and June 26, 2001, respectively. Signed by the Mayor on July 24, 2001, it was assigned Act No. 14-109 and transmitted to both Houses of Congress for its

review. D.C. Law 14-43 became effective on October 26, 2001.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 1-751.

Legislative history of Law 15-211. — Law 15-211, the “Board of Education Continuity and Transition Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-714, which was referred to the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on June 29, 2004, and July 13, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-498 and transmitted to both Houses of Congress for its review. D.C. Law 15-211 became effective on December 7, 2004.

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-309.05.

Editor’s notes. — Purpose of Law 10-254: Section 2 of Initiative Measure 49 provided that the purpose of the act is to promote a citizen government by fostering increased competition through rotation in office and to prevent the establishment of entrenched incumbency at all levels of government.

Section 3(a) of D.C. Law 17-156 amended this section subject to congressional enactment of section 2 of D.C. Law 17-156. As of the publication of this note, congress has not enacted section 2 of D.C. Law 17-156.

CASE NOTES

ANALYSIS

Board of Education.
Challenges and contests.
Effect of irregularities.
Election law violations.
Petitions.
Primaries.
Regulations affecting political rights.
Voter qualifications.
Write-in votes.

Board of Education.

Board of education candidate did not appear on ballot as part of any “slate,” so as to violate statute requiring election to be conducted on nonpartisan basis, even though she linked her name with those of democratic party candidates for other offices. D.C. Code 1981, § 31-101(a). *Hawkins v. Butler-Truesdale*, 584 A.2d 1241, 1990 D.C. App. LEXIS 329 (1990).

Challenges and contests.

Board of Elections and Ethics could consider in challenges to mayor’s primary election nominating petitions improprieties committed by some of mayor’s circulators in procuring signatures on petitions, even though electoral statute specified criminal misdemeanor penalties for willful misconduct by a petition circulator, as evidence of fraud by circulators related directly to Board’s duty to resolve challenges to the nominating petitions. *Williams v. D.C. Bd. of Elections & Ethics*, 804 A.2d 316, 2002 D.C. App. LEXIS 439 (2002).

Mayor was put on notice that issues before Board of Elections and Ethics would include allegations of fraud by some of the circulators of his nominating petitions, where challenges filed with Board clearly implied that petitions submitted by such circulators contained forgeries or were not personally circulated by them, challengers asked Board to throw out all peti-

tions attributable to such circulators, Board’s general counsel informed the parties at pre-hearing conference that Board was not only interested in validity of signatures but the manner in which those signatures were obtained, and at hearing questions directed to circulators who appeared indicated the Board’s concerns. *Williams v. D.C. Bd. of Elections & Ethics*, 804 A.2d 316, 2002 D.C. App. LEXIS 439 (2002).

For purposes of election statute providing that petition must be “filed” no later than 5:00 p.m. on the final day, Board of Elections and Ethics’ interpretation of term “filed” as meaning that challenges to nominating petitions are timely “filed” if challenger or his representative is personally within Board’s offices by 4:45 p.m. on the final day for filing and possesses the challenged documents regardless of fact that processing of those documents may result in their actual receipt, as evidenced by time stamp after 5:00 p.m. was reasonable. D.C. Code 1981, § 1-1312(q). *Pree v. District of Columbia Bd. of Elections & Ethics*, 645 A.2d 603, 1994 D.C. App. LEXIS 131 (1994).

Prospective mayoral candidates’ claim that statutory requirement of a match of address between nominating petition and voter registration roll was superseded by address change provisions of National Voter Registration Act would not be considered by Court of Appeals since claim was not raised before Board of Elections and Ethics. *National Voter Registration Act of 1993*, § 2 et seq., 42 U.S.C. § 1973gg et seq.; D.C. Code 1981, § 1-1312(o)(3). *Pree v. District of Columbia Bd. of Elections & Ethics*, 645 A.2d 603, 1994 D.C. App. LEXIS 131 (1994).

Constitutional challenge of election statute by candidate unsuccessful at being placed on ballot is judged under flexible standard; severe restrictions must be narrowly drawn to ad-

vance compelling state interest, but reasonable nondiscriminatory restrictions are generally justified by state's important regulatory interests. U.S. Const. Amends. 1, 5. *Orange v. District of Columbia Bd. of Elections & Ethics*, 629 A.2d 575, 1993 D.C. App. LEXIS 199 (1993).

Board of Elections and Ethics' 30-day period within which to certify an initiative for the ballot and the period within which initiative petitions may be challenged commence once the Board accepts the submitted petitions. D.C. Code 1980 Supp. § 1-1116(o). *Dankman v. District of Columbia Bd. of Elections & Ethics*, 443 A.2d 507, 1981 D.C. App. LEXIS 418 (1981).

Challenge to initiative petitions, which was filed 12 days after acceptance of the petitions by the Board of Elections and Ethics, was timely and therefore Board had jurisdiction to hear it. D.C. Code 1980 Supp. § 1-1116(o). *Dankman v. District of Columbia Bd. of Elections & Ethics*, 443 A.2d 507, 1981 D.C. App. LEXIS 418 (1981).

In fulfilling its statutory duty to determine whether results of presidential preference primary, as certified by Board of Elections and Ethics, were in fact the true results it was the duty of the court to attempt to discern the intent of the voters; standard to be applied in determining intent was not one of absolute sureness since reasonable certainty was enough. D.C. Code § 1-1111(b). *Gollin v. District of Columbia Board of Elections & Ethics*, 359 A.2d 590, 1976 D.C. App. LEXIS 309 (1976).

Petition challenging refusal of Board of Elections and Ethics to count ballots cast in District of Columbia presidential preference primary and delegate election because voters failed to mark box next to name of candidate or uncommitted slate was not untimely on ground that petitioners did not challenge the form of the ballot before the election since form of the ballot was not the crux of the matter, but, rather, issue was whether the ballots in dispute evidenced an intent sufficient to warrant crediting of those ballots to particular presidential candidates or uncommitted slates. D.C. Code § 1-1111(b). *Gollin v. District of Columbia Board of Elections & Ethics*, 359 A.2d 590, 1976 D.C. App. LEXIS 309 (1976).

Administrative remedy available to individuals or groups who may institute action before the Board of Elections and Ethics by challenge "according to law or regulation" was unavailable as regards challenge to Board's refusal to count over 8,000 ballots cast in the presidential preference primary and delegate election since only law or regulation permitting such challenges pertains to challenges to nominating petitions and challenges to persons who have been allowed to vote by a challenged ballot, none of which situations was involved in instant case. D.C. Code §§ 1-1108(p)(1),

1-1109(e), 1-1111(b). *Gollin v. District of Columbia Board of Elections & Ethics*, 359 A.2d 590, 1976 D.C. App. LEXIS 309 (1976).

Written challenge, which was filed with the District of Columbia Board of Elections by the Board's executive secretary who did not present his challenge as a "qualified elector" and which challenged the validity of several nominating petitions for the office of at-large council member, was invalid because not filed by a "qualified elector." D.C. Code §§ 1-1101 et seq., 1-1108(i)(1), (p)(1, 2). *Crawford v. Board of Elections*, 325 A.2d 451, 1974 D.C. App. LEXIS 272 (1974).

Statutory provision that board of elections shall determine validity of challenges to nominating petitions not more than eight days after challenge has been filed is directory only, and where eighth day fell on Saturday and determination was postponed to following Monday, delay beyond eight-day period did not deprive board of jurisdiction to rule upon pending challenges. D.C. Code § 1-1108(j)(2). In re *Haworth*, 258 A.2d 447, 1969 D.C. App. LEXIS 339 (App. 1969).

Effect of irregularities.

In challenge to nominating petitions to place mayor on primary ballot, evidence that purported signatures on petitions submitted by some of mayor's circulators included actors, television characters, politicians, and sports figures, that many signatures appeared to be in the same handwriting, that no addresses appeared after some names, that one circulator collected 540 signatures in a 24 hour period, that some petition pages contained the non-existent date of June 31, and that such circulators asserted their Fifth Amendment privilege when subpoenaed, supported finding by Board of Elections and Ethics that there had been widespread obstruction and pollution of the nominating process, and that it was not possible to determine if any of the signatures on petition sheets submitted by such circulators were in fact genuine and properly obtained without undue influence or fraud. *Williams v. D.C. Bd. of Elections & Ethics*, 804 A.2d 316, 2002 D.C. App. LEXIS 439 (2002).

Board of Elections and Ethics' interpretation of one of its own regulations providing that a defect in a circulator's status does not invalidate the signatures he has gathered on an initiative petition, which restricted applicability of the rule to cover only those circumstances in which the circulator failed to be registered due to his or her inadvertence to register or a candidate proponent reasonably believes the circulator is a qualified elector and the number of signatures involved was de minimis, was plainly erroneous and restricted rather than implemented the basic purpose of the Initiative Act. D.C. Code 1981, § 1-1302(10). *Dankman v.*

District of Columbia Bd. of Elections & Ethics, 443 A.2d 507, 1981 D.C. App. LEXIS 418 (1981).

Although in voting in presidential preference primary and delegate election some 8,000 voters who selected delegates committed to a particular candidate or listed on the uncommitted slate failed to mark the box next to name of that candidate or uncommitted slate, such ballots were not thereby rendered invalid where, among other things, it was impossible to vote for a presidential candidate or uncommitted slate and then vote for delegates pledged to another candidate or uncommitted slate. D.C. Code § 1-1111(b). *Gollin v. District of Columbia Board of Elections & Ethics*, 359 A.2d 590, 1976 D.C. App. LEXIS 309 (1976).

Where board of elections found that all signatures on nominating petitions of candidate for at-large seat on board of education were from proper ward, omission of ward numbers from two petition forms was "formal error" and did not require invalidation of the petitions. D.C. Code § 1-1108(o), (p)(2). *Mosley v. Board of Elections*, 283 A.2d 210, 1971 D.C. App. LEXIS 217 (1971).

In absence of any assertion that nominating process was obstructed or polluted because of omission of date of initiation from front page of nominating petitions of candidate for at-large seat on board of education, omission of dates was only "formal error" and was capable of being waived by board of elections. D.C. Code § 1-1108(o), (p)(2). *Mosley v. Board of Elections*, 283 A.2d 210, 1971 D.C. App. LEXIS 217 (1971).

Election law violations.

District of Columbia's overall ballot access scheme for presidential candidates was not excessively burdensome, and thus District did not need to establish compelling interest to justify regulation governing reporting of write-in votes, where District required minor party presidential candidates to submit nomination petition signed by one percent of all registered voters. *Libertarian Party v. D.C. Bd. of Elections & Ethics*, 768 F.Supp.2d 174, 2011 U.S. Dist. LEXIS 23029 (2011), affirmed by 682 F.3d 72, 401 U.S. App. D.C. 179, 2012 U.S. App. LEXIS 11602 (2012).

Statute that set forth qualifications for candidates for various offices, circulators of nominating petitions, and procedures to be followed in nominations process did not provide criminal penalty with respect to circulator who allegedly submitted petition for candidate with forged signatures; rather, only criminal penalty provision set forth in that statute pertained to circulation of petition without meeting qualifications to be circulator. D.C. Code 1981, § 1-1312(b)(2, 3), (j)(1). *Mitchell v. District of*

Columbia, 741 A.2d 1049, 1999 D.C. App. LEXIS 288 (1999).

Because statute that set forth qualifications for circulators of nominating petitions and procedures to be followed in nominations process did not provide criminal penalty with respect to circulator who allegedly submitted petition for candidate with forged signatures, regulations adopted by Board of Elections and Ethics could not be used to criminalize such conduct. D.C. Code 1981, § 1-1312(j)(1); D.C.Mun.Reg. title 3, §§ 1604.2, 1607.2. *Mitchell v. District of Columbia*, 741 A.2d 1049, 1999 D.C. App. LEXIS 288 (1999).

Petitions.

Phrase "in the same election" within meaning of statute that signature of registered voter on petition nominating candidate for nonvoting delegate from District of Columbia for election in a primary or general election shall not be counted if such voter has previously signed other valid petition nominating the same or any other candidate for the same office in the same election, refers separately to the primary election and general election, thus qualifying a voter to sign a petition in the primary and another petition in the general election. D.C. Code § 1-1108(l). *Moore v. Board of Elections*, 319 F. Supp. 437, 1970 U.S. Dist. LEXIS 9465 (1970).

Although District of Columbia statute permitting direct nomination of duly qualified candidates for certain offices did not include United States Senator in its enumeration of those offices requiring nominating petitions, the requirement in proposed constitution that nominating petitions be submitted to obtain a place on the ballot as a candidate for office of United States senator was approved by voters and, thus, name of candidate who failed to submit nominating petitions, as was required by law, could not be placed on the ballot as candidate for that office. *Bartel v. D.C. Bd. of Elections & Ethics*, 808 A.2d 1240, 2002 D.C. App. LEXIS 599 (2002).

Obvious falsity of signatures in many of the nominating petition sheets submitted by some of the circulators working to place mayor on ballot could be properly considered by the Board of Elections and Ethics in judging the veracity of all of the signatures such circulators submitted, and it was within the authority of the Board to disregard all of the signatures attributable to such circulators without conducting a signature-by signature review. *Williams v. D.C. Bd. of Elections & Ethics*, 804 A.2d 316, 2002 D.C. App. LEXIS 439 (2002).

Under statute requiring that each person signing city council candidate's nominating petition include address which matches voter registration records of Board of Elections and Ethics, phrase the "Board's records" does not

include nominating petition itself for purpose of verifying addresses. D.C. Code 1981, § 1-1312(o)(3). *Orange v. District of Columbia Bd. of Elections & Ethics*, 629 A.2d 575, 1993 D.C. App. LEXIS 199 (1993).

Statute requiring that persons who sign city council candidate's nominating petition list address matching voter registration records was not severe burden on candidate and thus was constitutional if it was rational and nondiscriminatory exercise of power to regulate access to ballot, where candidate needed signatures of fewer than one percent of electorate, registered voters could sign more than one candidate's petition, voters could be recently registered, signatures need not be notarized, candidate could inform signers of importance of listing current registration address, and candidate's supporters had time to verify addresses and, if necessary, gather more signatures. D.C. Code 1981, § 1-1312(o)(1-3); U.S. Const. Amends. 1, 5. *Orange v. District of Columbia Bd. of Elections & Ethics*, 629 A.2d 575, 1993 D.C. App. LEXIS 199 (1993).

Rule requiring that petition signatures for nomination to district council show same address as listed on Board of Election records was invalid for failure to permit alternate methods of demonstrating that signer of petition was resident of district. D.C. Code 1981, § 1-1312(j)(1). *Harvey v. District of Columbia Bd. of Elections & Ethics*, 581 A.2d 757, 1990 D.C. App. LEXIS 267 (1990).

Primaries.

Board of Elections for the District of Columbia was without authority to permit official primary ballot to include what would be in effect a party presidential primary. D.C. Code 1961, § 1-1108(c). *District of Columbia Republican Committee v. Board of Elections*, 336 F.2d 939, 1964 U.S. App. LEXIS 5619 (C.A.D.C. 1964).

Regulations affecting political rights.

District of Columbia Election Act section which required that person holding any of certain offices resign before filing nominating petition for any of certain other offices if such other office had term beginning prior to end of term of office presently held created distinction between those holding coincident and noncoincident terms which was not justified by any rational governmental purpose and thus violated equal protection guaranty of Fifth Amendment. U.S. Const. Amend. 5; D.C. Code § 1-1115(b). *Barry v. District of Columbia Board of Elections & Ethics*, 448 F. Supp. 1249, 1978 U.S. Dist. LEXIS 18373 (1978), appeal dismissed by 580 F.2d 695, 188 U.S. App. D.C. 432, 1978 U.S. App. LEXIS 10640 (1978).

Requirements that candidate seeking to have his name placed on general election ballot as

independent candidate for nonvoting delegate to House of Representatives from District of Columbia obtain signatures of 2% of all registered voters or 5,000 signatures, whichever is less, while candidate seeking spot on ballot in primary obtain 2,000 signatures from registered party members, and that no signatures obtained by primary candidates or independents more than 99 days from primary or general election dates would be counted did not place unreasonable restriction on independents' candidacy or arbitrarily discriminate against independents in favor of candidates for major parties, in violation of equal protection. D.C. Code § 1-1108(i, j); *District of Columbia Delegate Act*, § 203(i), (j), 206, 84 Stat. 845; U.S. Const. Amends. 5, 14. *Moore v. Board of Elections*, 319 F. Supp. 437, 1970 U.S. Dist. LEXIS 9465 (1970).

Statute requiring persons who sign city council candidate's nominating petition to list address which matches voter registration records was nondiscriminatory and rational, and did not violate due process rights, if any, of candidate in being placed on ballot or First Amendment rights of voters, as all candidates had same opportunities and faced same restrictions, statute was designed to prevent election fraud, and other methods of determining whether signatures belonged to registered voters were substantially more burdensome. D.C. Code 1981, § 1-1312(o)(3); U.S. Const. Amends. 1, 5. *Orange v. District of Columbia Bd. of Elections & Ethics*, 629 A.2d 575, 1993 D.C. App. LEXIS 199 (1993).

Rule invalidating signatures on petition for nomination to district council, obtained by petition circulator who was not resident of district, was invalid; statute requiring that petition circulator be district resident did not provide for invalidation of signatures as a sanction, while invalidation was provided in analogous cases of initiative, referendum and recall petitions. D.C. Code 1981, § 1-1312(b)(2). *Harvey v. District of Columbia Bd. of Elections & Ethics*, 581 A.2d 757, 1990 D.C. App. LEXIS 267 (1990).

Voter qualifications.

Candidate was not denied equal protection by disqualification of 589 signatures on candidate's nominating petition under District of Columbia law requiring that each person who signs petition list address which matches that person's address on voter registration roll; law did not distinguish between categories of duly registered voters but between registered voters and those whose registration status was unknown. D.C. Code 1981, § 1-1312(i)(3-5), (o)(3); U.S.C. Const. Amend. 5. *Orange v. District of Columbia Bd. of Elections & Ethics*, 629 A.2d 575, 1993 D.C. App. LEXIS 199 (1993).

Those in District of Columbia who wish to participate in candidate selection process must be legally eligible to do so at time that process is under way. In re Haworth, 258 A.2d 447, 1969 D.C. App. LEXIS 339 (App. 1969).

Persons who were not registered in District of Columbia could not validly sign nominating petition for candidate and then register after petition was filed with board of elections. D.C. Code §§ 1-1107, 1-1108(i)(B). In re Haworth, 258 A.2d 447, 1969 D.C. App. LEXIS 339 (App. 1969).

Write-in votes.

In primary election, a registered voter who wishes to write in name of a candidate is not limited to writing in the name of a registered member of the party for which the ballot is cast. Leckie v. District of Columbia Bd. of Elections & Ethics, 457 A.2d 388, 1983 D.C. App. LEXIS 329 (1983).

Statutory provisions for nominating candidates for presidential electors by executive committees of major parties or by petition signed by at least 5% of the voters are the exclusive means through which presidential and vice presidential candidates may have their names printed on the ballot, but do not restrict the right of citizens, by write-in votes, to vote for candidates for whom qualified electors have been appointed but whose names are not printed on the ballot. D.C. Code § 1-1108(d, f). Kamins v. Board of Elections, 324 A.2d 187, 1974 D.C. App. LEXIS 255 (1974).

Statute providing that "Each vote cast for a candidate. .. whose name appears on the gen-

eral election ballot shall be counted as a vote cast for the candidates for presidential electors" of that candidate's party means that the Board of Elections need not count votes for candidates for whom no slate of electors has been filed but does not preclude counting write-in votes in favor of candidates for whom a slate of electors has been filed, despite contention that the names of such write-in candidates do not "appear" on the ballot. D.C. Code §§ 1-1108(d, f), 1-1110(a)(2); U.S. Const. Amend. 23. Kamins v. Board of Elections, 324 A.2d 187, 1974 D.C. App. LEXIS 255 (1974).

The Board of Elections should exercise its rule-making power to facilitate write-in votes in the future for candidates for president and vice president. D.C. Code § 1-1105(d). Kamins v. Board of Elections, 324 A.2d 187, 1974 D.C. App. LEXIS 255 (1974).

Fact that electronic vote-counting system is unable to read anything other than marks made by a No. 2 pencil does not justify refusal to count write-in or "sticker" ballots. Kamins v. Board of Elections, 324 A.2d 187, 1974 D.C. App. LEXIS 255 (1974).

There is nothing in statute regulating elections in the District of Columbia which precluded the counting of write-in and sticker votes in a presidential election where such votes were cast for candidates for whom a valid slate of elections had been filed, and such votes should have been counted. D.C. Code §§ 1-1108(d, f), 1-1110(a)(2); U.S. Const. Amends. 5, 14, 23. Kamins v. Board of Elections, 324 A.2d 187, 1974 D.C. App. LEXIS 255 (1974).

§ 1-1001.09. Secrecy required; place of voting; watchers; challenged ballots; assistance in marking ballot or operating voting machine; more than 1 vote prohibited; unopposed candidates; availability of regulations at polling place; deposit, inspection, and destruction of ballots.

(a) Voting in all elections shall be secret.

(b)(1) Except as provided in paragraphs (2) and (3) of this subsection, each registered qualified elector shall cast his or her vote in the voting precinct that serves his or her current residence address.

(2) The Board shall permit any duly registered voter to vote by absentee ballot, for any reason, under such rules as the Board may issue.

(3) If a person who is a registered qualified elector of the District casts a vote in a voting precinct that does not serve his or her current residence address by special ballot, the Board shall count that vote for all contests for which the elector would have been eligible to cast votes had he or she cast a vote in the correct voting precinct.

(b-1)(1) For each primary and general election, the Board shall designate no fewer than 4 early voting centers.

(2) At each early voting center, the Board shall allow persons to vote in person for not more than 7 days before election day; provided, that no early voting shall occur on a holiday.

(3) The Office of Property Management shall assist the Board in identifying appropriate locations for use as early voting centers.

(4) The Chief Technology Officer shall assist the Board in ensuring that each early voting center maintains a secure network environment with the Board's office.

(5) Before January 31, 2011, the Board shall submit a report to the Council on the effectiveness of using early voting centers, including information about:

(A) The effect of early voting centers on turnout rates;

(B) Whether the expanded use of early voting centers could permit for consolidation of precincts; or

(C) Other information about cost savings opportunities for the use of polling places.

(6) The Board shall issue rules implementing this subsection.

(b-2) The Board may provide blank ballots by fax, e-mail, or other electronic means to absent uniformed services voters and overseas voters in federal elections.

(c) Any candidate or group of candidates may, not less than 2 weeks prior to such election, petition the Board for credentials authorizing watchers at 1 or more polling places and at the place or places where the vote is to be counted for the next election during voting hours and until the count has been completed. The Board shall formulate rules and regulations not inconsistent with this subchapter to prescribe the form of watchers' credentials, to govern the conduct of such watchers, and to limit the number of watchers so that the conduct of the election will not of the election will not be unreasonably obstructed. Such rules and regulations should provide fair opportunity for watchers for all candidates or groups of candidates to challenge prospective voters whom the watchers believe to be unqualified to vote, to question the accuracy in the vote count, and otherwise to observe the conduct of the election at the polling place and the counting of votes.

(c-1) The Board shall issue rules for granting access to the electoral process, including access to polling places, ballot-tabulation centers, and other similar locations, to election observers. The rules shall take into account the need to avoid disruption and crowding in polling places and ballot-tabulation centers and the need to ensure that all questions posed by observers should be answered as fully, accurately, and cooperatively as possible. Election observers shall be allowed uniform and nondiscriminatory access to all stages of the election process, including the certification of election technologies, early and absentee voting, and vote tabulation. The Board shall issue a public notice with respect to any denial of a request by any election observer for access to any polling place for purposes of observing an election. The notice shall be issued not later than 24 hours after the denial.

(d)(1) A registered voter may challenge another voter's status as a qualified elector of the District of Columbia by stating in writing the name of the person challenged, the basis for the challenge, and the evidence provided to support the challenge. The challenger shall sign an affidavit, declaring under penalty of perjury, that the challenge is based upon substantial evidence which he or she believes in good faith shows that the person challenged is not a qualified elector of the District. After receiving a challenge or making a challenge on his or her own initiative, the precinct captain or other official in charge of the polling place shall give the challenged voter an opportunity to respond.

(2) Notwithstanding paragraph (1) of this subsection, a voter shall not be challenged solely on the basis of characteristics or perceived characteristics not directly related to the challenged voter's status as a registered qualified elector, including race, color, religion, sex, personal appearance, sexual orientation, gender identity or expression, matriculation status, political affiliation, or physical disability. The Board may remove a precinct captain or void the credentials of an authorized watcher, or refer the matter for prosecution as a violation of § 1-1001.12, if the Board determines that the precinct captain or the watcher has violated the provisions of this paragraph.

(3) The precinct captain shall review the evidence presented and shall affirm the challenge if he or she finds that it is based on substantial evidence specific to the voter being challenged and probative of the challenged voter's status as a qualified elector. The precinct captain shall deny the challenge if he or she finds that the challenge is not based on substantial evidence that is specific to the voter being challenged and probative of the challenged voter's status as a qualified elector. The precinct captain shall record the decision and the rationale for the decision on a form provided by the Board.

(4) If the precinct captain denies the challenge, he or she shall inform the challenger that the challenger may appeal the decision to the Board and shall give the challenger copies of the rules regarding challenges and appeals to the Board. Any appeal of the precinct captain's decision to deny the challenge shall be made either before the challenged voter casts a regular ballot, or before either the challenger or the challenged voter leaves the polling place, whichever is earlier. If the challenger does not appeal the precinct captain's decision to deny the challenge, the challenged voter shall cast a regular ballot.

(5) If the challenger appeals the precinct captain's decision to deny the challenge, the precinct captain shall state the facts of the case to the Board's hearing officer, who is authorized to rule on the appeal for the Board. A Board member, the Board's Executive Director, or the Board's chief voter registration official may serve as the Board's hearing officer for the appeal. The precinct captain shall contact the hearing officer by telephone. The hearing officer shall ensure that the hearing is recorded, and shall take testimony under oath from the challenger, the person challenged, the precinct captain, and any witnesses to the challenge who wish to testify. Each person who testifies before the hearing officer shall state for the record their:

- (A) Name as recorded on the Board's voter registration list;
- (B) Residence address, mailing address, and telephone number; and
- (C) Role in the challenge.

(6) The hearing officer shall receive evidence and testimony pursuant to paragraph (5) of this subsection and then shall close the hearing. The hearing officer shall review all of the evidence presented pertaining to the challenge and make a decision regarding the appeal, based on his or her determination of whether the challenger has presented substantial evidence that is specific to the voter being challenged and probative of the challenged voter's status as a qualified elector. The recording of the hearing shall be transcribed and shall serve as the official case record along with the written documentation of the precinct captain's initial decision to deny the challenge.

(7) The hearing officer shall notify the precinct captain of his or her decision on the appeal of the unsuccessful challenge, and the precinct captain shall notify each party of the hearing officer's decision. If the hearing officer affirms the precinct captain's decision to deny the challenge, the challenged voter shall cast a regular ballot. The precinct captain shall inform the challenger of his or her right to appeal the decision of the Board hearing officer to the Superior Court of the District of Columbia. If the hearing officer overturns the precinct captain's decision to deny the challenge, the challenged voter shall be allowed to vote only by casting a paper ballot marked "challenged" in accordance with the procedures set forth in paragraph (8) of this subsection.

(8) If the precinct captain affirms the challenge made at the polling place, or if the Board's hearing officer overturns the decision of the precinct captain to deny a challenge, the precinct captain shall allow the person to vote only by casting a paper ballot marked "challenged" and shall provide the voter with written notification of his or her right of appeal pursuant to subsection (e) of this section. Challenged ballots shall be segregated, and no challenged ballot shall be counted until the challenge has been removed pursuant to subsection (e) of this section. The precinct captain shall not allow the challenged voter to cast a "challenged" ballot unless the voter signs an affidavit swearing or affirming, under penalty of perjury, that he or she is a registered qualified elector in the District of Columbia who resides in the precinct in which the ballot is to be cast, and if applicable, the Advisory Neighborhood Commission single-member district in which the ballot is to be cast.

(d-1) Any individual who alleges that their name has been erroneously omitted from the list of registered voters, or alleges that their name, address or party affiliation is erroneously printed on the list of registered voters, shall be permitted to cast a ballot. Ballots so cast shall be placed in a sealed envelope. The outside of the envelope shall contain the signature of the voter and such information as the Board deems necessary to determine that the individual is qualified to have the vote counted. The official in charge of the polling place shall provide the voter with written notification of appeal rights as provided in subsection (e) of this section, should the Board determine that the voter is not qualified to vote in the election.

(d-2) Any individual who votes in a federal election as a result of a court order or other order that extends the time established for closing the polls by a District law in effect 10 days before the date of that election shall vote in that election by casting a special ballot. Any ballot cast under this subsection shall be separated and held apart from other special ballots not affected by the order.

(e)(1) A voter's signing of a challenged or special ballot envelope shall be deemed as the filing of an appeal by the voter of the refusal by the Board's chief voter registration official to permit the voter to vote on election day by regular ballot, and a waiver of personal notice from the Board of any denial or refusal to a later count of the challenged or special ballot. The Board shall review all available evidence pertaining to the eligibility of each voter casting a challenged or special ballot, and shall make a preliminary decision about whether to count or to reject each challenged or special ballot based on its review of the available evidence.

(2) Not later than the Tuesday following the election, the Board shall maintain a toll-free telephone service during regular business hours for any person who has voted by a challenged or special ballot to learn the Board's preliminary decision whether to count or reject his or her ballot and the reason for each decision.

(3) If the Board has made a preliminary determination that a challenged ballot shall not be counted, it shall afford the challenged voter an opportunity to contest that determination in a hearing before the Board. The hearings authorized pursuant to this paragraph shall take place not earlier than 8 days and not later than 10 days after that election. The Board shall inform the voter of the date scheduled for the hearing and the manner by which he or she may learn the Board's final decision to count or reject the voter's challenged ballot. The notice shall be in writing and shall be provided to the voter at the time of voting. At the hearing, the voter may appear and testify. The Board shall make a final determination within 2 days after the date of the hearing. The voter may appeal the decision of the Board to the Superior Court of the District of Columbia within 3 days after the date of the Board's decision. The decision of the court shall be final and not appealable.

(4) If the Board has determined that a special ballot shall be not be counted, it shall afford the voter an opportunity to contest that determination in a hearing before the Board no earlier than 8 days and not later than 10 days after any election held pursuant to this subchapter. The Board shall inform the voter in writing, at the time of voting, of the date scheduled for the hearing and the manner by which the voter may learn whether the Board has decided to count or reject his or her special ballot. The Board shall make a final determination within 2 days after the date of the hearing. The voter may appeal the decision of the Board to the Superior Court of the District of Columbia within 3 days after the date of the Board's decision. The decision of the court shall be final and not appealable.

(f) If a qualified elector is unable to record his or her vote by marking the ballot or operating the voting machine an official of the polling place shall, on the request of the voter, enter the voting booth and comply with the voter's directions with respect to recording his or her vote. Upon the request of any such voter, a second official of the polling place shall also enter the voting booth and witness the recordation of the voter's directions. The official or officials shall in no way influence or attempt to influence the voter's decisions, and shall tell no one how the voter voted. The official in charge of the voting place shall make a return of all such voters, giving their names and disabilities.

(g)(1) No person shall vote more than once in any election nor shall any person vote in a primary or party election held by a political party other than that to which he or she has declared himself or herself to be a member.

(2) A name written on a ballot in any election shall not be counted as valid unless the individual whose name is written on the ballot has complied with the requirements of § 1-1001.08(r).

(h) In the event that the total number of candidates of one party nominated to an office or group of offices of that party pursuant to § 1-1001.08(a) or § 1-1001.17(i) does not exceed the number of such offices to be filled, the Board may, prior to election day and, notwithstanding the provisions of § 1-1001.08(c) or § 1-1001.17(i), declare the candidates so nominated to be elected without opposition, in which case the fact of their election pursuant to this subsection shall appear for the information of the voters on any ballot prepared by the Board for their party for the election of other candidates in the same election.

(i) Copies of the regulations of the Board with respect to voting shall be made available to prospective voters at each polling place.

(j) The Board shall receive the ballots cast and deposit them in a secure place where they shall be safely kept for 22 months. Inspection of such ballots shall be made in accordance with regulations of the Board. Whenever the ballots shall have remained in the custody of the Board for 22 months, and no election contest or other proceeding is pending in which the ballots may be needed as evidence, the Board may destroy such ballots.

(j-1) Upon the conclusion of voting at any precinct, the Board shall post a summary count of votes cast at the precinct. The summary shall be posted in a conspicuous place that can be seen from the outside of the precinct immediately upon completion of voting.

(j-2) Precinct captains shall prepare a summary log that indicates the number of:

- (1) Votes cast in a polling place;
- (2) Persons who have signed in;
- (3) Voter-verifiable records that arrived at the polling place before the polls opened;
- (4) Used voter-verifiable records; and
- (5) Unused voter-verifiable records.

(k)(1) Each voting system used in an election in the District occurring after January 1, 2012, shall:

(A) Meet or exceed the voting system standards set forth in the Help America Vote Act of 2002, approved October 29, 2002 (116 Stat. 1666; 42 U.S.C. § 15301 et seq.), or be federally certified;

(B) Create a voter-verifiable record of all votes cast;

(C) Be capable without further modification of creating, storing, and exporting an anonymous separate machine record of each voter-verifiable record, showing each choice made by the voter; and

(D) Meet any additional standards established by the Board; provided, that the standards shall not conflict with those set forth in the Help America Vote Act of 2002, approved October 29, 2002 (116 Stat. 1666; 42 U.S.C. § 15301 et seq.).

(2) The voter-verifiable record shall be permanent and capable of being inspected for the purpose of audits and recounts. A voter-verifiable record need not be a paper ballot. A satisfactory voter-verifiable record shall include:

(A) A paper ballot prepared by the voter for the purpose of being read by a precinct-based optical scanner;

(B) A paper ballot prepared by the voter to be mailed, whether mailed from a domestic or an overseas location; and

(C) A paper ballot created through the use of a ballot marking device.

(3) The Board shall adopt voting system standards and review the standards on a biennial basis.

(l) The Board, through the Office of Contracting and Procurement, shall purchase voting system equipment under a competitive-bidding procedure that includes the following conditions:

(1) A provision to place a copy of the software source code for the voting system, and related documents, in escrow with an independent third-party evaluator selected by the vendor and the Board;

(2) A warranty provision that requires that the vendor:

(A) Promptly and fully disclose any flaw, defect, or vulnerability in the voting system of which the vendor is aware or becomes aware; and

(B)(i) Remedy any flaw, defect, or vulnerability in the voting system identified in subparagraph (A) of this paragraph at no cost to the District; or

(ii) If the flaw, defect, or vulnerability in the voting system cannot be remedied:

(I) Replace the voting system or the affected part of the voting system or provide an equivalent voting system at no cost to the District; or

(II) Reimburse the District for the full purchase price of the voting system or for the value of the affected part of the voting system, plus any costs incurred by the District as a result of the flaw, defect, or vulnerability;

(3) A most-favored customer provision that ensures that the District receive pricing terms that are at least as favorable as those received by any other customer, except for the federal government, during the term of the contract and during any extensions or renewals of the contract; and

(4) A provision that incorporates the requirements of § 1-1001.09a(k).

(Aug. 12, 1955, 69 Stat. 702, ch. 862, § 9; Oct. 4, 1961, 75 Stat. 819, Pub. L. 87-389, § 1(14, 15, 16, 17); July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Apr. 22, 1968, 82 Stat. 104, Pub. L. 90-292, § 4(6); July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Sept. 22, 1970, 84 Stat. 853, Pub. L. 91-405, title II, § 205(c), (d), (g), (h), (l); Dec. 23, 1971, 85 Stat. 792, Pub. L. 92-220, § 1(17); Aug. 14, 1973, 87 Stat. 313, Pub. L. 93-92, § 1(15); Dec. 16, 1975, D.C. Law 1-37, § 2(6), (7), 22 DCR 3430; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 2(g), (n), (p), (q), 29 DCR 458; July 1, 1982, D.C. Law 4-120, § 2(d), 29 DCR 2064; June 29, 1984, D.C. Law 5-96, § 2, 31 DCR 2554; Mar. 16, 1988, D.C. Law 7-92, § 3(l), 35 DCR 716; Mar. 11, 1992, D.C. Law 9-75, § 2(d), 39 DCR 310; Feb. 5, 1994, D.C. Law 10-68, § 7(b), 40 DCR 6311; Sept. 22, 1994, D.C. Law 10-173, § 2(d), 41 DCR 5154; July 25, 1995, D.C. Law

11-30, § 2(c), 42 DCR 1547; Apr. 9, 1997, D.C. Law 11-255, § 6(a), 44 DCR 1271; Apr. 3, 2001, D.C. Law 13-251, § 2(b), 48 DCR 668; Dec. 7, 2004, D.C. Law 15-218, § 2(d), 51 DCR 9132; Apr. 24, 2007, D.C. Law 16-305, § 6(b), 53 DCR 6198; June 25, 2008, D.C. Law 17-177, § 4(b), 55 DCR 3696; Feb. 4, 2010, D.C. Law 18-103, § 2(f), 56 DCR 9169; Mar. 31, 2011, D.C. Law 18-330, § 2(b), 58 DCR 20; May 31, 2012, D.C. Law 19-131, § 2(b), 59 DCR 2389.)

Section references. — This section is referred to in §§ 1-1001.07, 1-1001.14, and 1-1001.17.

Prior Codifications. — 1981 Ed., § 1-1313. 1973 Ed., § 1-1109.

Effect of amendments. — D.C. Law 13-251 rewrote subsecs. (d) and (e) which had read:

“(d) If the official in charge of the polling place, after hearing both parties to any such challenge or acting on his or her own initiative with respect to a prospective voter, reasonably believes the prospective voter is unqualified to vote, he or she shall allow the voter to cast a paper ballot marked ‘challenged’, and shall provide the prospective voter with written notification of his or her rights of appeal as provided in subsection (e) of this section. Ballots so cast shall be segregated, and no such ballot shall be counted until the challenge has been removed as provided in subsection (e) of this section; provided, however, that the official in charge of the polling place shall not allow the prospective voter to cast a ‘challenged’ ballot unless such voter:

“(1) Signs an affidavit under penalty of perjury, that he or she is a registered qualified elector in the District; and

“(2) Provides identification indicating that he or she is a resident of the precinct in which the ballot is to be cast.

“(e) A voter’s act of signing a challenged or special ballot envelope shall be deemed the filing of an appeal by the voter of the refusal by the Board’s chief voter registration official to permit the voter to vote on election day by regular ballot, and a waiver of personal notice from the Board of any denial or refusal to a later count of the challenged or special ballot. No earlier than 8 days and not later than 10 days after the date of any election held under this subchapter, the Board shall conduct a hearing on the petition of any voter who cast a challenged or special ballot in the election to have that voter’s vote counted in the same manner as all other ballots cast in that election. The Board shall inform the voter of the dates scheduled for the hearings and the manner by which the voter may learn whether the Board has decided to count or reject the voter’s challenged or special ballot. The notice shall be in writing and shall be provided to the voter at the time of voting. No later than the second Wednesday following the election, the Board

shall cause to be placed in its main office, in the main public library, and at least 1 branch public library located in each ward, an alphabetical list of those persons whose challenged or special ballots have been rejected with the reason or reasons for the rejection. The Board shall publish notice of the availability of the list in at least one newspaper of general circulation on the Tuesday following the date of the election. In addition, not later than the Tuesday following the election, during regular business hours, the Board shall maintain a telephone service by which any voter who has voted a special or challenged ballot may learn whether the challenged or special ballot will be counted or has been rejected. At the hearing, the petitioner may appear and give testimony on the question of the decision not to count the challenged or special ballot. The Board shall make a determination within 2 days after the date of the hearing. Any aggrieved party may appeal the decision of the Board to the Superior Court of the District of Columbia within 3 days after the date of the Board’s decision. The decision of the Court in any such case shall be final and not appealable.”

D.C. Law 15-218 added subsecs. (d-2) and (k) and rewrote pars. (2) and (3) of subsec. (e) which had read:

“(2) No later than the second Wednesday following the election, the Board shall cause to be displayed in its main office, on its Internet site, in the main public library, and at least one public library in each ward, an alphabetical list of persons who cast a challenged or special ballot and the Board’s preliminary decision to count or reject each ballot, with the reasons for each decision. The Board shall publish notice of the availability of the list in at least one newspaper of general circulation on the Tuesday following the election. Not later than the Tuesday following the election, during regular business hours, the Board shall maintain a telephone service by which any voter who has voted a challenged or special ballot may learn of the Board’s preliminary decision to count or reject his or her ballot along with the reason or reasons for each decision.

“(3) If the Board has made a preliminary determination that a challenged ballot shall not be counted, it shall afford the challenged voter an opportunity to contest that determination in a hearing before the Board. If the Board

has made a preliminary determination that a challenged ballot shall be counted, it shall afford the challenger an opportunity to contest that determination in a hearing before the Board. The hearings authorized pursuant to this subsection shall take place not earlier than 8 days and not later than 10 days after any election held pursuant to this subchapter. The Board shall inform the voter and the challenger of the date scheduled for the hearings and the manner by which they may learn of the Board's final decision to count or reject the voter's challenged ballot. The notice shall be in writing and shall be provided to both parties at the time of voting. At the hearing, the voter and the challenger may appear and give testimony on the decision whether to count the challenged ballot. The Board shall make a final determination within 2 days after the date of the hearing. Any aggrieved party may appeal the decision of the Board to the Superior Court of the District of Columbia within 3 days after the date of the Board's decision. The decision of the court shall be final and not appealable."

D.C. Law 16-305, in subsec. (d)(2), substituted "disability" for "handicap".

D.C. Law 17-177, in subsec. (d)(2), substituted "sexual orientation, gender identity or expression" for "sexual orientation".

D.C. Law 18-103, in subsec. (b)(1), substituted "in paragraphs (2) and (3)" for "in paragraph (2)"; rewrote subsecs. (b)(2) and (k); added subsecs. (b)(3), (b-1), (b-2), (c-1), (j-1), (j-2), and (l); and, in subsec. (j), substituted "22 months" for "12 months".

D.C. Law 18-330 rewrote subsecs. (b-1)(1) and (2).

D.C. Law 19-131, in subsec. (b)(1), substituted "each registered qualified elector shall cast his or her vote in the voting precinct that serves his or her current residence address" for "the vote of a person who is a registered qualified elector of the District shall be valid only if the vote is cast in the voting precinct that serves his or her current residence address"; in subsec. (b)(3), substituted "all contests for which the elector would have been eligible to cast votes had he or she cast a vote in the correct voting precinct" for "federal election contests and for any District-wide election contests"; and, in subsec. (b-1)(1), substituted "no fewer than 4 early voting centers" for "an early voting center in each of the 8 election wards".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(d) of Help America Vote Temporary Amendment Act of 2004 (D.C. Law 15-120, March 30, 2004, law notification 51 DCR 3807).

Section 2(b) of D.C. Law 19-101, in subsec. (b)(1), substituted "each registered qualified elector shall cast his or her vote in the voting precinct that serves his or her current residence address" for "the vote of a person who is

a registered qualified elector of the District shall be valid only if the vote is cast in the voting precinct that serves his or her current residence address"; in subsec. (b)(3), substituted "all contests for which the elector would have been eligible to cast votes had he or she cast a vote in the correct voting precinct" for "federal election contests and for any District-wide election contests"; and, in subsec. (b-1)(1), substituted "no fewer than 4 early voting centers" for "an early voting center in each of the 8 election wards".

Section 4(b) of D.C. Law 19-101 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(d) of Help American Vote Emergency Amendment Act of 2003 (D.C. Act 15-283, December 18, 2003, 51 DCR 197).

For temporary (90 day) amendment of section, see § 2(d) of Help America Vote Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-405, March 18, 2004, 51 DCR 3650).

For temporary (90 day) amendment of section, see § 2(d) of Help America Vote Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-658, December 29, 2004, 52 DCR 492).

For temporary (90 day) amendment of section, see §§ 2(f), 4(b) of Omnibus Election Reform Emergency Amendment Act of 2009 (D.C. Act 18-236, November 30, 2009, 56 DCR 9154).

For temporary (90 day) repeal of section 4(b) of D.C. Law 18-103, see § 7007 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 2(b) of Board of Elections and Ethics Electoral Process Improvement Emergency Amendment Act of 2011 (D.C. Act 19-266, January 3, 2012, 59 DCR 207).

Legislative history of Law 1-37. — For legislative history of D.C. Law 1-37, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 4-120. — For legislative history of D.C. Law 4-120, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 5-96. — Law 5-96 was introduced in Council and assigned

Bill No. 5-384, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 10, 1984 and April 30, 1984, respectively. Signed by the Mayor on May 9, 1984, it was assigned Act No. 5-137 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-92. — For legislative history of D.C. Law 7-92, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 9-75. — For legislative history of D.C. Law 9-75, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 1-1001.07.

Legislative history of Law 10-173. — For legislative history of D.C. Law 10-173, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 11-30. — For legislative history of D.C. Law 11-30, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 13-251. — For Law 13-251, see notes following § 1-1001.07.

Legislative history of Law 15-218. — For D.C. Law 15-218, see notes following § 1-1001.02.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 1-307.02.

Legislative history of Law 17-177. — For Law 17-177, see notes following § 1-309.01.

Legislative history of Law 18-103. — For Law 18-103, see notes following § 1-1001.02.

Legislative history of Law 18-330. — For history of Law 18-330, see notes under § 1-1001.05.

Legislative history of Law 19-131. — For history of Law 19-131, see notes under § 1-1001.07.

Editor's notes. — Section 4(b) of D.C. Law 18-103 provided: "(b) For any election after December 31, 2010, section 2(f)(1)(B) and (3) shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan."

Section 7007 of D.C. Law 18-223 repealed section 4(b) of D.C. Law 18-103.

CASE NOTES

ANALYSIS

Absentee ballots.
Challenges to voters.
Effect of irregularities.
Polling places.

Absentee ballots.

It was error to refuse to count absentee ballots which were postmarked after election day which fell on November 4, where absentee ballots were not mailed by board of elections until November 2 together with instructions to voters that ballots must be returned by November 10 but without mention of requirement that ballots be postmarked on election day. D.C. Code §§ 1-1109(b, e), 1-1111(b). *Curtis v. Bindeman*, 261 A.2d 515, 1970 D.C. App. LEXIS 191 (App. 1970).

Challenges to voters.

Failure to challenge all voters who have been registered more than 90 days before election does not foreclose challenge to same voters later at the polls, when time may have yielded additional information useful to challenge. D.C. Code 1981, §§ 1-1311, 1-1313. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 1997 D.C. App. LEXIS 39 (1997).

Unsuccessful challengers to voter registrations were entitled to fact-finding hearing, de-

spite failure to file administrative complaint before election results were certified, as there was no statutorily prescribed administrative hearing for challenges at the polls; although Board of Elections and Ethics might have agreed to entertain petition, failure to test Board's willingness to conduct hearing was excusable absent discernable hearing as of right rather than grace. D.C. Code, § 1-1313(e). *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 1997 D.C. App. LEXIS 39 (1997).

Precertification Board of Elections and Ethics hearing on at-the-polls challenge to registrant found qualified to vote by precinct captain is legally optional, not administrative remedy challenger must exhaust. D.C. Code 1981, § 1-1313(c, d). *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 1997 D.C. App. LEXIS 39 (1997).

Effect of irregularities.

It was not error to count ballots which were marked in voting precincts other than precincts in which voters resided where ballots were assigned to and counted by board as if they had actually been marked and deposited in voters' precinct and there were no instances of double voting. D.C. Code §§ 1-1109(b, g), 1-1111(b).

Curtis v. Bindeman, 261 A.2d 515, 1970 D.C. App. LEXIS 191 (App. 1970).

Polling places.

Statutory provision that vote shall be valid only if cast in voting precinct where residence

shown on voter's registration is located should be liberally construed so as not to deny innocent voters their right to vote, or to upset an election for technical reasons. D.C. Code § 1-1109(b). Curtis v. Bindeman, 261 A.2d 515, 1970 D.C. App. LEXIS 191 (App. 1970).

§ 1-1001.09a. Post-election audits.

(a) For the purposes of this section, the term:

(1) "Error rate" means the greatest change in difference between any 2 candidates' vote totals in an audit sample, comparing the machine result and the tally from the manual audit for a contest, divided by the number of votes (including overvotes and undervotes) audited in that contest in that sample.

(2) "Margin of victory" means the difference between the contest-wide vote totals for the apparent winning candidate with the fewest votes and the apparent losing candidate with the most votes in the machine result, divided by the number of votes cast in the entire contest (including undervotes and overvotes).

(b) After each primary, general, and special election, the Board shall conduct a public manual audit of the voter-verifiable records tabulated by the Board.

(c)(1) The Board shall manually audit:

(A) At least 5% of the precincts with precinct-level vote-tabulation machines during the election; and

(B) At least 5% of the voter-verifiable records that are tabulated centrally, including absentee ballots and special ballots.

(2) Of those voter-verifiable records audited, the Board shall examine no fewer than 3 contests, of which:

(A) At least one shall be a District-wide contest; and

(B) At least 2 shall be a ward-wide race.

(3) The Board may, in its discretion, whether or not by request of a losing candidate, audit additional precincts, voter-verifiable records, or contests; provided, that the Board shall select at least one additional contest not selected pursuant to paragraph (2) of this subsection. The Board shall issue rules describing the criteria that it will use and the procedure for considering requests for additional audits. The Board may also collect fees, set forth by rule, for additional audits conducted under this paragraph.

(d) The precincts audited shall be selected on an entirely random basis; provided, that, within each ward, each precinct in the election shall have an equal chance of being selected. The voter-verifiable records that are tabulated centrally shall also be selected on an entirely random basis. The contests audited shall be selected on an entirely random basis; provided, that, within each category, each contest in the election shall have an equal chance of being selected. The Board shall publicly announce the method by which it intends to randomly select precincts, voter-verifiable records tabulated centrally, and contests, and shall conduct the random selection in such a way as to allow the public to observe and ensure that the selection is random. The selection shall be followed by the audit as soon as is practicable.

(e) The date of the audit shall be announced no later than 3 business days after tabulation has been completed, but no fewer than 24 hours in advance of the audit.

(f) The audit shall be conducted in public view so that members of the public are able to verify that votes are correctly classified and tallied, but are unable to touch ballots and other official materials or to interfere in any way with the manual audit process.

(g) Individuals performing the manual audit shall:

(1) Not be assigned to tally the results from a precinct in which that individual served as a polling place worker;

(2) Not at any time before or during the manual audit be informed of the corresponding machine tally results;

(3) Follow the Board's procedures for hand counting voter-verifiable records, tallying results, noting discrepancies and any missing or damaged voter-verifiable records, and interpreting ambiguous votes where the voter intent may not be clear; and

(4) Make a record of each ambiguous vote, including the nature of the marking error causing the ambiguity and how the vote was interpreted.

(h)(1) If an audit initially reveals a discrepancy between the machine result and the tally from the manual audit that yields an error rate greater than 0.25% or 20% of the margin of victory, whichever is less, and the discrepancy is not attributed to marking errors, a 2nd count shall be conducted.

(2) If the 2nd count confirms the discrepancy described in paragraph (1) of this subsection, the Board shall also audit another precinct in each ward in which the contest appeared on the ballot, selected at random using the same method previously used to select the precincts, and an additional 5% of all centrally tabulated ballots.

(3) If the additional audit sample described in paragraph (2) of this subsection also reveals a discrepancy between the machine result and the tally from the manual audit that yields an error rate greater than 0.25% or 20% of the margin of victory, whichever is less, the Board shall audit all precincts and centrally tabulated ballots in which the contest was held.

(i) The results derived from the manual audits shall be deemed the true and correct results of the election contests at issue with respect to the votes audited and shall be used in lieu of further counting in any automatic recounts.

(j) The Board shall publish on its website and make available for public inspection a report of results of the manual audit before certification of the official election results. The report shall:

(1) Identify and, when possible, explain any discrepancies between the initial count and the manual tally; and

(2) Describe further investigations to be undertaken or actions to be taken based on the observed discrepancies.

(k)(1) A vendor providing a voting system for use in the District elections shall furnish a bond in the amount of \$10,000 to the District.

(2) A comparison of the results compiled by the voting system with the post-election audit described in this section shall show that the results of the electronic voting system differed by no more than 0.25% from the manual

count reviewed, not including discrepancies associated with missing or damaged voter-verifiable records and with ambiguous votes.

(3) If a voting system is found to have failed to record votes accurately and in the manner set forth in paragraph (2) of this section, and that the failure is attributable to either the voting system's design or actions of the vendor, the vendor shall forfeit the bond required by paragraph (1) and pay any costs incurred by the Board directly attributable to the failure.

(4) The vendor shall reimburse the District for the costs of any post-election audit required under subsection (h)(2) and (3) of this section, not including any costs associated for salaried election officials. If the vendor does not reimburse the District for these costs, the vendor shall forfeit the bond required by paragraph (1) of this subsection and shall be liable for the additional costs.

(Aug. 12, 1955, 69 Stat. 702, ch. 862, § 9a, as added Feb. 4, 2010, D.C. Law 18-103, § 2(g), 56 DCR 9169.)

Emergency legislation. — For temporary (90 day) addition, see § 2(g) of Omnibus Election Reform Emergency Amendment Act of 2009 (D.C. Act 18-236, November 30, 2009, 56 DCR 9154).

Legislative history of Law 18-103. — For Law 18-103, see notes following § 1-1001.02.

§ 1-1001.10. Dates for holding elections; votes cast for President and Vice President counted as votes for presidential electors; voting hours; tie votes; filling vacancy where elected official dies, resigns, or becomes unable to serve.

(a)(1) The elections of the officials referred to in § 1-1001.01(1), (2), (3), or (4) shall be held, at the request of the party, on either the 2nd Tuesday in February of each presidential election year or the 1st Tuesday in April of each presidential election year if there is a primary election already scheduled for other purposes on the date requested. The primary under § 1-1001.05(b) shall be held on the 1st Tuesday in April of each presidential election year.

(2) The electors of President and Vice President of the United States shall be elected on the Tuesday next after the 1st Monday in November in every 4th year succeeding every election of a President and Vice President of the United States. Each vote cast for a candidate for President or Vice President whose name appears on the general election ballot shall be counted as a vote cast for the candidates for presidential electors of the party supporting such presidential and vice presidential candidate. Candidates receiving the highest number of votes in such election shall be declared the winners, except that in the case of a tie it shall be resolved in the same manner as is provided in subsection (c) of this section.

(3)(A) Except as otherwise provided in the case of special elections under this subchapter or § 206(a) of the District of Columbia Delegate Act, primary elections of each political party for the office of Delegate to the House of Representatives shall be held on the 1st Tuesday in April of each even-

numbered year; and general elections for such office shall be held on the Tuesday next after the 1st Monday in November of each even-numbered year.

(B) Except as otherwise provided in the case of special elections under this subchapter primary elections of each political party for the office of member of the Council shall be held on the 1st Tuesday in April in 1974, and every 2nd year thereafter, and general election for such offices shall be held on the 1st Tuesday after the 1st Monday in November in 1974 and every 2nd year thereafter.

(C) Except as otherwise provided in the case of a special election under this subchapter, primary elections of each political party for the office of Mayor and Chairman shall be held on the 1st Tuesday in April of every 4th year, commencing with calendar year 1974, and the general election for such office shall be held on the 1st Tuesday after the 1st Monday in November in 1974 and every 4th year thereafter.

(4) With respect to special elections required or authorized by this subchapter, the Board may establish the dates on which such special elections are to be held and prescribe such other terms and conditions as may, in the Board's opinion, be necessary or appropriate for the conduct of such elections in a manner comparable to that prescribed for other elections held pursuant to this subchapter.

(5) General elections of members of the Board of Education shall be held on the 1st Tuesday after the 1st Monday in November of each odd-numbered calendar year through 1987, and thereafter in each even-numbered calendar year, on the same day and month.

(b)(1) All elections prescribed by this subchapter shall be conducted by the Board in conformity with the provisions of this subchapter. In all elections held pursuant to this subchapter, the polls shall be open from 7:00 a.m. to 8:00 p.m., except in instances when the time established for closing the polls is extended pursuant to a federal or District court order or any other order. The Board may, upon request of the precinct captain or upon its own initiative, if an emergency exists by reason of mechanical failure of a voting machine, an unanticipated shortage of ballots, excessive wait times, bomb threats, or similar unforeseen event warrants it, extend the polling hours for that precinct until the emergency situation has been resolved. Candidates who receive the highest number of votes, other than candidates for election as political party officials or delegates to national conventions nominating candidates for President and Vice President of the United States, shall be declared winners. If after the date of an election and prior to the certification of the election results, the qualified candidate who has received the highest number of votes dies, withdraws, or is found to be ineligible to hold the office, or in the event no candidate qualifies for election, the Board shall declare no winner, and the office shall become vacant as of the date of the beginning of the term of office for which the election was held. With respect to a primary election, the position of candidate shall be vacant until filled pursuant to subsection (d) of this section.

(2)(A) No person shall canvass, electioneer, circulate petitions, post any campaign material or engage in any activity that interferes with the orderly conduct of the election within a polling place or within a 50-foot distance from

the entrance and exit of a polling place. The Board, by regulation, shall establish procedures for determination and clear marking of the 50-foot distance.

(B) A person who violates the provisions of this paragraph shall, upon conviction, be fined not less than \$50 or more than \$500 or imprisoned for not more than 30 days, or both.

(c) In the case of a tie vote, the resolution of which will affect the outcome of any election, the candidates receiving the tie vote shall cast lots before the Board at 12:00 noon on a date to be set by the Board. This date shall be set no sooner than 2 days following determination by the Board of the results of the election which resulted in a tie. The candidate to whom the lot shall fall shall be declared the winner. If the candidate or candidates fail to appear by 12:00 noon on said day, the Board shall cast lots for him or her or them. For purpose of casting lots, any candidate may appear in person, or by proxy appointed in writing.

(d)(1) In the event that any official, other than Delegate, Mayor, member of the Council, member of the Board of Education, or winner of a primary election for the office of Delegate, Mayor, or member of the Council, elected pursuant to this subchapter dies, resigns, or becomes unable to serve during his or her term of office leaving no person elected pursuant to this subchapter to serve the remainder of the unexpired term of office, the successor or successors to serve the remainder of the term shall be chosen pursuant to the rules of the duly authorized party committee, except that the successor shall have the qualifications required by this subchapter for the office.

(2)(A) In the event that a vacancy occurs in the office of Delegate before May 1 of the last year of the Delegate's term of office, the Board shall hold a special election to fill the unexpired term. The special election shall be held on the first Tuesday that occurs more than 114 days after the date on which the vacancy is certified by the Board unless the Board determines that the vacancy could be filled more practicably in a special election held on the same day as the next District-wide special, primary, or general election that is to occur within 60 days of the date on which the special election would otherwise have been held under the provisions of this subsection. The person elected to fill the vacancy in the office of Delegate shall take office the day on which the Board certifies his or her election.

(B) In the event that a vacancy occurs in the office of Delegate on or after May 1 of the last year of the Delegate's term of office, the Mayor shall appoint a successor to complete the remainder of the term of office.

(3) In the event of a vacancy in the office of United States Representative or United States Senator elected pursuant to § 1-123 and that vacancy cannot be filled pursuant to paragraph (1) of this subsection, the Mayor shall appoint, with the advice and consent of the Council, a successor to complete the remainder of the term of office.

(e)(1) In the event of a vacancy of an elected member of the Board of Education, the Board of Elections shall hold a special election to fill the unexpired term of the vacant office. The special election shall be held on the 1st Tuesday that occurs more than 114 days after the date on which the vacancy

is certified by the Board of Elections, unless the Board determines that the vacancy could be filled more practicably in a special election held on the same day as the next special, primary, or general election that is to occur within 60 days of the date on which a special election would otherwise have been held under the provisions of this subsection. The person elected as a member to fill a vacancy on the Board of Education shall take office the day on which the Board of Elections certifies his or her election.

(2) When the office of the President becomes vacant, the Board of Education shall select one of the members of the Board to serve as the interim President until the election of a new President.

(f) Notwithstanding the provisions of subsection (e) of this section, if a vacancy of an elected member of the Board of Education occurs on or after February 1st of the last year of the term of the vacant office, a special election shall not be held and the Board of Education may appoint a person to fill such vacancy until the unexpired term ends. Any person appointed under this subsection shall have the same qualifications for holding such office as were required of his or her immediate predecessor.

(g) A vacancy among the appointed Board members shall be filled within 45 days of its occurrence. The Mayor shall submit a nominee to the Council for confirmation within 30 days of the vacancy. Any Board member appointed to fill a vacancy shall serve until the end of the original term.

(Aug. 12, 1955, 69 Stat. 702, ch. 862, § 10; Oct. 4, 1961, 75 Stat. 819, Pub. L. 87-389, § 1(18, 19, 20); Apr. 22, 1968, 82 Stat. 105, Pub. L. 90-292, § 4(7); Sept. 22, 1970, 84 Stat. 850, Pub. L. 91-405, title II, §§ 203(c), 205(e)(2); Dec. 23, 1971, 85 Stat. 792, Pub. L. 92-220, § 1(18)-(21); Aug. 14, 1973, 87 Stat. 313, Pub. L. 93-92, § 1(16)-(19); Dec. 24, 1973, 87 Stat. 834, Pub. L. 93-198, title VII, § 751(4)-(8); Aug. 29, 1974, 88 Stat. 794, Pub. L. 93-395, § 3(a); Sept. 2, 1976, D.C. Law 1-79, title V, § 504, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title II, § 201, title IV, § 402, 24 DCR 2372; Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 2(h), (n)-(q), (s), 29 DCR 458; Sept. 26, 1984, D.C. Law 5-116, § 5, 31 DCR 4018; Mar. 16, 1988, D.C. Law 7-92, § 3(m), 35 DCR 716; Dec. 10, 1991, D.C. Law 9-49, § 2(b), 38 DCR 6572; Sept. 22, 1994, D.C. Law 10-173, § 2(e), 41 DCR 5154; July 18, 2000, D.C. Law 13-149, § 5(b), 47 DCR 4639; June 21, 2003, D.C. Law 15-18, § 2(b), 50 DCR 3389; Dec. 7, 2004, D.C. Law 15-218, § 2(e), 51 DCR 9132; Oct. 18, 2007, D.C. Law 17-26, § 2(c), 54 DCR 8018; Mar. 25, 2009, D.C. Law 17-353, § 218, 56 DCR 1117; Feb. 4, 2010, D.C. Law 18-103, § 2(h), 56 DCR 9169; June 16, 2011, D.C. Law 19-7, § 2(b), 58 DCR 3882; Apr. 27, 2012, D.C. Law 19-124, § 501(g)(5), 59 DCR 1862.)

Cross references. — Advisory Neighborhood Commissions, elections, see § 1-309.05 et seq.

Recall of elected public officials, filling of vacancies, see § 1-204.114.

Section references. — This section is referred to in §§ 1-1001.08, 1-1001.17, and 38-2651.

Prior Codifications. — 1981 Ed., § 1-1314.

1973 Ed., § 1-1110.

Effect of amendments. — D.C. Law 13-149 in subsec. (e), designated the existing text as par. (1), in par. (1) as so designated, substituted “a vacancy of an elected member of” for “a vacancy on,” and added par. (2); in subsec. (f), substituted “a vacancy of an elected member of” for “a vacancy on”; and added subsec. (g).

Section 7 of D.C. Law 13-149 provided: “This

act shall apply upon the effective date of the School Governance Charter Amendment Act of 2000.”

D.C. Law 15-18, in subsec. (a), rewrote par. (1), and substituted “on the 1st Tuesday after the 2nd Monday in September of each even-numbered year” for “on the 1st Tuesday in May of each even-numbered year which is a presidential election year, and in other even-numbered years, on the 1st Tuesday after the 2nd Monday in September” in par. (3)(A).

D.C. Law 15-218, in par. (1) of subsec. (b), inserted “, except in instances when the time established for closing the polls is extended pursuant to a federal or District court order or any other order.” following “7:00 a.m. to 8:00 p.m.”

D.C. Law 17-26 rewrote subsec. (a)(1), which had read as follows: “(a)(1) The election of the officials referred to in § 1-1001.05(1) shall be held on the 1st Tuesday after the 2nd Monday in September of each presidential election year. The elections of the officials referred to in § 1-1001.01(2) and (3), and of officials designated pursuant to § 1-1001.01(4), and the primary under § 1-1005(b) shall be held on the 2nd Tuesday in January of each presidential election year.”

D.C. Law 17-353 validated a previously made technical correction in subsec. (a)(1).

D.C. Law 18-103, in subsec. (b)(1), inserted “The Board may, upon request of the precinct captain or upon its own initiative, if an emergency exists by reason of mechanical failure of a voting machine, an unanticipated shortage of ballots, excessive wait times, bomb threats, or similar unforeseen event warrants it, extend the polling hours for that precinct until the emergency situation has been resolved.”

D.C. Law 19-7, in subsec. (a)(1), substituted “election year or the 1st Tuesday in April” for “election year or the 1st Tuesday after the 2nd Monday in September” and substituted “The primary under § 1-1001.05(b) shall be held on the 1st Tuesday in April of each presidential election year.” for “The primary under § 1-1001.05(b) shall be held on the 2nd Tuesday in February of each presidential election year.”; and, in subsecs. (a)(3)(A), (B), (C), substituted “shall be held on the 1st Tuesday in April” for “shall be held on the 1st Tuesday after the 2nd Monday in September”.

D.C. Law 19-124, in subsec. (e)(1), substituted “Board of Elections” for “Board of Elections and Ethics”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Presidential Primary Petition Waiver and Democratic State Committee Elections Temporary Act of 2003 (D.C. Law 15-55, December 9, 2003, law notification 51 DCR 1790).

For temporary (225 day) amendment of section, see § 2 of Presidential Primary State Committee Elections Temporary Amendment Act of 2003 (D.C. Law 15-97, March 10, 2004, law notification 51 DCR 3617).

For temporary (225 day) amendment of section, see § 2(e) of Help America Vote Temporary Amendment Act of 2004 (D.C. Law 15-120, March 30, 2004, law notification 51 DCR 3807).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of Presidential Primary Election Emergency Amendment Act of 2003 (D.C. Act 15-43, March 24, 2003, 50 DCR 2805).

For temporary (90 day) amendment of section, see § 2(b) of Presidential Primary Petition Waiver and Democratic State Committee Elections Emergency Act of 2003 (D.C. Act 15-135, July 29, 2003, 50 DCR 6857).

For temporary (90 day) amendment of section, see § 2 of Presidential Primary State Committee Elections Emergency Amendment Act of 2003 (D.C. Act 15-258, December 5, 2003, 50 DCR 11011).

For temporary (90 day) amendment of section, see § 2(e) of Help American Vote Emergency Amendment Act of 2003 (D.C. Act 15-283, December 18, 2003, 51 DCR 197).

For temporary (90 day) amendment of section, see § 2(e) of Help America Vote Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-405, March 18, 2004, 51 DCR 3650).

For temporary (90 day) amendment of section, see § 2(e) of Help America Vote Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-658, December 29, 2004, 52 DCR 492).

For temporary (90 day) amendment of section, see § 2(h) of Omnibus Election Reform Emergency Amendment Act of 2009 (D.C. Act 18-236, November 30, 2009, 56 DCR 9154).

For temporary (90 day) amendment of section, see § 401(g)(5) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 5-116. — Law 5-116 was introduced in Council and assigned Bill No. 5-61, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 26, 1984 and July 10, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-168 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-92. — For legislative history of D.C. Law 7-92, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 9-1. — For legislative history of D.C. Law 9-1, see Historical and Statutory Notes following § 1-1001.08.

Legislative history of Law 9-49. — For legislative history of D.C. Law 9-49, see Historical and Statutory Notes following § 1-1001.08.

Legislative history of Law 10-173. — For legislative history of D.C. Law 10-173, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 13-149. — For Law 13-149, see notes following § 1-1001.08.

Legislative history of Law 15-18. — For Law 15-18, see notes following § 1-1001.05.

Legislative history of Law 15-218. — For D.C. Law 15-218, see notes following § 1-1001.02

Legislative history of Law 17-26. — For Law 17-26, see notes following § 1-1001.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 1-129.05.

Legislative history of Law 18-103. — For Law 18-103, see notes following § 1-1001.02.

Legislative history of Law 19-7. — For history of Law 19-7, see notes under § 1-1001.05

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

References in text. — “Section 206(a) of the District of Columbia Delegate Act,” referred to in subsection (a)(3)(A) of this section, is § 206(a) of the Act of September 22, 1970, Pub. L. 91-405, and provided for the nomination and election of the 1st Delegate to the House of Representatives from the District of Columbia.

Editor's notes. — Voting accessibility for the elderly and handicapped: Public Law 98-435 enacted the Voting Accessibility for the Elderly and Handicapped Act.

Section 3(b) of D.C. Law 17-156 amended this section subject to congressional enactment of section 2 of D.C. Law 17-156. As of the publication of this note, congress has not enacted section 2 of D.C. Law 17-156.

CASE NOTES

ANALYSIS

Authority of court.

Authority of Board of elections.

Write-in votes.

Authority of court.

Court of Appeals has statutory authority to review a decision of the Board of Elections and Ethics refusing to certify, as eligible to take office, the winner of an election for an at-large seat on the Council of the District of Columbia, which refusal is based on the Board's determination that the election winner's membership on the Council would violate the District's statute prohibiting more than three Council members who are affiliated with the same political party from serving at-large on the Council. *Kabel v. D.C. Bd. of Elections & Ethics*, 962 A.2d 919, 2008 D.C. App. LEXIS 492 (2008).

Authority of Board of elections.

Board of Elections and Ethics has statutory authority to refuse to certify, as eligible to take office, the winner of an election for an at-large seat on the Council of the District of Columbia if the election winner's membership on the Council would violate the District's statute prohibiting more than three Council members who are affiliated with the same political party from serving at-large on the Council. *Kabel v. D.C.*

Bd. of Elections & Ethics, 962 A.2d 919, 2008 D.C. App. LEXIS 492 (2008).

Write-in votes.

Board of Elections and Ethics was required to tabulate the votes cast for write-in candidates in the Statehood Green Party primary election to determine if any write-in nominee received enough votes to win a delegate at the national convention, even though the number of write-in votes was less than the plurality that declared candidate received; the Green Party's Primary Election Plan called for the use of proportional representation to reflect the primary vote total instead of a winner-take-all method, and thus, it was possible for a write-in candidate to receive enough votes to be awarded a delegate without receiving a majority or a plurality of the total votes cast. *Best v. D.C. Bd. of Elections & Ethics*, 852 A.2d 915, 2004 D.C. App. LEXIS 297 (2004).

Statute providing that “Each vote cast for a candidate. .. whose name appears on the general election ballot shall be counted as a vote cast for the candidates for presidential electors” of that candidate's party means that the Board of Elections need not count votes for candidates for whom no slate of electors has been filed but does not preclude counting write-in votes in favor of candidates for whom a slate of electors has been filed, despite contention that the

names of such write-in candidates do not “appear” on the ballot. D.C. Code §§ 1-1108(d, f), 1-1110(a)(2); U.S. Const. Amend. 23. *Kamins v. Board of Elections*, 324 A.2d 187, 1974 D.C. App. LEXIS 255 (1974).

There is nothing in statute regulating elections in the District of Columbia which precluded the counting of write-in and sticker

votes in a presidential election where such votes were cast for candidates for whom a valid slate of elections had been filed, and such votes should have been counted. D.C. Code §§ 1-1108(d, f), 1-1110(a)(2); U.S. Const. Amendments. 5, 14, 23. *Kamins v. Board of Elections*, 324 A.2d 187, 1974 D.C. App. LEXIS 255 (1974).

§ 1-1001.11. Recount; judicial review of election.

(a)(1) The Board shall recount the votes cast in one or more voting precincts, if, within 7 days after the Board certifies the results of an election for an office, a candidate for that office petitions the Board in writing and specifies the precincts in which the recount shall be conducted. Before beginning the recount, the Board shall prepare an estimate of the costs and inform the petitioner of the anticipated number of hours needed to complete the recount and the cost per hour. The costs of the recount shall not include any payments associated for salaried election officials. If the petitioner chooses to proceed with the recount, the petitioner shall deposit the amount of \$50 per precinct included in the recount. If the result of the election is changed as a result of the recount, the deposit shall be refunded. If the result is not changed, the Board shall determine the actual cost of the recount. The petitioner shall be liable for the actual cost of the recount and the Board may collect that cost from the deposit made with the petition.

(2) If in any election for President and Vice President of the United States, Delegate to the House of Representatives, Mayor, Chairman of the Council, member of the Council, President of the Board of Education, or member of the Board of Education, the results certified by the Board show a margin of victory for a candidate that is less than one percent of the total votes cast for the office, the Board shall conduct a recount. The cost of a recount conducted pursuant to this paragraph shall not be charged to any candidate.

(3) In the case of an initiative or referendum measure placed on the ballot pursuant to § 1-1001.16, or a recall measure placed on the ballot pursuant to § 1-1001.17, the Board shall conduct a recount if the difference between the number of votes for and against the initiative, referendum, or recall measure is less than one percent of the total votes cast.

(4) The Board shall issue regulations prescribing the procedures for the Board to:

(A) Provide notice of a recount to candidates for an office subject to a recount;

(B) Conduct a recount and certify the official result of an election, initiative, referendum, or recall measure which is the subject of the recount; and

(C) Ensure that each candidate for an office subject to a recount may designate watchers to be present while the recount is conducted, or in the case of an initiative, referendum, or recall measure, ensure that members of the public may be present while the recount is conducted.

(b)(1) Within 7 days after the Board certifies the results of an election, any person who voted in the election may petition the District of Columbia Court

of Appeals to review the election. The Court's authority to review the results of an election shall include initiative, referendum, and recall measures as well as elections for a particular office.

(2) In response to such a petition, the Court may set aside the results certified and declare the true results of the election, or void the election in whole or in part. To determine the true results of an election, the Court may order a recount or take other appropriate action, whether or not a recount has been conducted or requested pursuant to subsection (a) of this section. The Court shall void an election only if it:

(A) Determines that the candidate certified as the winner of the election does not meet the qualifications required for office; or

(B) Finds that there was any act or omission, including fraud, misconduct, or mistake serious enough to vitiate the election as a fair expression of the will of the registered qualified electors voting in the election.

(3) If the Court voids an election, it may order a special election, which shall be conducted in such a manner, and at such time, as the Board may prescribe.

(4) The decision of the Court in any case brought pursuant to this subsection shall be final and may not be appealed.

(5) The Court shall have the authority to require the losing party to reimburse the prevailing party for reasonable attorneys' fees and other costs associated with the case, but shall not exercise this authority if it finds that the reimbursement would impose an undue financial hardship on the losing party.

(Aug. 12, 1955, 69 Stat. 703, ch. 862, § 11; Apr. 22, 1968, 82 Stat. 106, Pub. L. 90-292, § 4(8); Dec. 23, 1971, 85 Stat. 793, Pub. L. 92-220, § 1(22); Aug. 14, 1973, 87 Stat. 313, Pub. L. 93-92, § 1(20); Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; Sept. 13, 1980, D.C. Law 3-93, § 2, 27 DCR 3497; Mar. 16, 1982, D.C. Law 4-88, § 2(q)-(s), 29 DCR 458; June 28, 2002, D.C. Law 14-168, § 2, 49 DCR 4478; Feb. 4, 2010, D.C. Law 18-103, § 2(i), 56 DCR 9169.)

Prior Codifications. — 1981 Ed., § 1-1315.
1973 Ed., § 1-1111.

Effect of amendments. — D.C. Law 14-168 rewrote the section which had read:

"(a) If within 7 days after the Board certifies the results of an election, any qualified candidate at such election petitions the Board to have the votes cast at such election recounted in 1 or more voting precincts, the Board shall order such recount. In each such case, the petitioner shall deposit a fee of \$50 for each precinct petitioned to be recounted. If the total cost of the recount is less than the amount so deposited, the difference shall be refunded. If the total cost of the recount is greater than the deposit, the petitioner shall remit payment for such additional costs within 15 days of receipt of notification from the Board that additional costs have been incurred. If the result of the election is changed as a result of the recount, the entire amount deposited by the petitioner shall be refunded. In no case, however, shall the

petitioner be required to pay the cost of any recount in any such election if the difference in the number of votes received by the petitioner in connection with any office and the number of votes received by the person certified as having been elected to that office, in the case of an election from a ward, is less than 1 per centum or 50 votes, whichever is less, or in the case of an election at large, is less than 1 per centum or 350 votes, whichever is less."

"(b) Within 7 days after the Board certifies the results of an election, any person who voted in the election may petition the District of Columbia Court of Appeals to review such election. In response to such a petition, the Court may set aside the results so certified and declare the true results of the election, or void the election in whole or in part. To determine the true results of an election the Court may order a recount or take other appropriate action, whether or not a recount has been conducted or requested pursuant to subsection (a) of this section. The Court shall void an election only

for fraud, mistake, the making of expenditures by a candidate, or the willful receipt of contributions in violation of the District of Columbia Campaign Finance Reform and Conflict of Interest Act (§ 1-1101.01 et seq.), or other defect, serious enough to vitiate the election as a fair expression of the will of the registered qualified electors voting therein. If the Court voids an election it may order a special election, which shall be conducted in such manner (comparable to that prescribed for regular elections), and at such time, as the Board shall prescribe. The decision of such Court shall be final and not appealable."

D.C. Law 18-103 rewrote subsec. (a)(1), which had read as follows: "(a)(1) The Board shall recount the votes cast in one or more voting precincts, if within 7 days after the Board certifies the results of an election for an office, a candidate for that office petitions the Board in writing and specifies the precincts in which the recount shall be conducted. The candidate shall deposit a fee of \$50 for each precinct included in the recount. If the result of the election is changed as a result of the recount, the fee deposited by the petitioner shall be refunded."

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(i) of Omnibus Election Reform Emergency Amendment Act of 2009 (D.C. Act 18-236, November 30, 2009, 56 DCR 9154).

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 3-93. — Law 3-93 was introduced in Council and assigned Bill No. 3-300, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 3, 1980 and June 17, 1980, respectively. Signed by the Mayor on July 9, 1980, it was assigned Act No. 3-215 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 14-168. — Law 14-168, the "Election Recount and Judicial Review Amendment Act of 2002", was introduced in Council and assigned Bill No. 14-269, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 5, 2002, and April 9, 2002, respectively. Signed by the Mayor on April 30, 2002, it was assigned Act No. 14-357 and transmitted to both Houses of Congress for its review. D.C. Law 14-168 became effective on June 28, 2002.

Legislative history of Law 18-103. — For Law 18-103, see notes following § 1-1001.02.

CASE NOTES

ANALYSIS

Authority of court.

Challenges and contests.

—Admissibility of evidence, challenges and contests.

—Hearing, challenges and contests.

—In general.

—Jurisdiction, challenges and contests.

—Limitations and laches, challenges and contests.

—Nature and elements, challenges and contests.

—Presumptions and burden of proof, challenges and contests.

—Review, challenges and contests.

—Scope of inquiry, challenges and contests.

—Weight and sufficiency of evidence, challenges and contests.

Exhaustion of remedies.

Residence.

Authority of court.

Court of Appeals has statutory authority to review a decision of the Board of Elections and Ethics refusing to certify, as eligible to take office, the winner of an election for an at-large

seat on the Council of the District of Columbia, which refusal is based on the Board's determination that the election winner's membership on the Council would violate the District's statute prohibiting more than three Council members who are affiliated with the same political party from serving at-large on the Council. *Kabel v. D.C. Bd. of Elections & Ethics*, 962 A.2d 919, 2008 D.C. App. LEXIS 492 (2008).

Challenges and contests.

— Admissibility of evidence, challenges and contests.

Regulation of Board of Elections and Ethics providing that in case of write-in vote, no ballot shall be regarded as defective due to unclear writing or, among other things, omission or use of wrong initial in a name permits and indeed requires that Board consider extrinsic evidence. *Pendleton v. District of Columbia Bd. of Elections & Ethics*, 449 A.2d 301, 1982 D.C. App. LEXIS 405 (1982).

In determining challenge to write-in votes, it was reasonable for Board of Elections and Ethics to consider extrinsic evidence. *Pendleton v. District of Columbia Bd. of Elections & Ethics*,

433 A.2d 1102, 1981 D.C. App. LEXIS 329 (1981), vacated by 449 A.2d 301, 1982 D.C. App. LEXIS 405 (D.C. 1982).

— Hearing, challenges and contests.

When challenger loses voter registration challenge before precinct captain and wants review of that decision, challenger must be afforded evidentiary hearing unless issues raised can be disposed of directly by Court of Appeals as a matter of law, without fact-finding. D.C. Code 1981, § 1-1315(b). *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 1997 D.C. App. LEXIS 39 (1997).

Proceeding challenging validity of elections would be referred to Superior Court for fact-finding hearing to which unsuccessful challengers to voter registrations were entitled, as Court of Appeals was not equipped to hold evidentiary hearing. Superior Court had subpoena power which Board of Elections and Ethics lacked, and Superior Court was experienced with elections statute. D.C. Code 1981, § 1-1315(b). *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 1997 D.C. App. LEXIS 39 (1997).

Fact that Board of Elections and Ethics analyzed record to determine whether petitioners challenging election had proved their case by preponderance of evidence, notwithstanding petitioners' focus on alleged fraud by successful candidate, suggested that Board, recognizing public interest in vindicating will of electorate, did not treat case as one in which relief could be awarded only if intentional misrepresentation was established; rather, Board apparently examined record to determine whether petitioners had shown that election did not freely express will of properly registered electors. D.C. Code 1981, § 1-1315(b). *Allen v. District of Columbia Bd. of Elections & Ethics*, 663 A.2d 489, 1995 D.C. App. LEXIS 158 (1995).

— In general.

By focusing on failings of petition challenging certification of election results as an initial pleading, the motion brought by board of elections and ethics for summary affirmance of certification was akin to a motion to dismiss petitioner's challenge to certification for failure to state a claim, and court would construe it as such. *Jackson v. D.C. Bd. of Elections & Ethics*, 770 A.2d 79, 2001 D.C. App. LEXIS 91 (2001).

Petition for review of certification of election results must contain a concise statement of claims and must identify facts showing an entitlement to relief, including both defects or irregularities in the election and that the flawed election led to a result that is not "true." *Jackson v. D.C. Bd. of Elections & Ethics*, 770 A.2d 79, 2001 D.C. App. LEXIS 91 (2001).

Petition challenging certification of election results failed to state a claim for relief by

claiming merely a "violation of the election process," as there was no concise statement of claims, and attached letter that petitioner wrote to board of elections and ethics stated that five days before polling places were open an individual working at a voter registration desk was urging voters to elect a specific individual; court could not presume date was in error and activity occurred at a polling or vote counting place to find claim of electioneering. *Jackson v. D.C. Bd. of Elections & Ethics*, 770 A.2d 79, 2001 D.C. App. LEXIS 91 (2001).

In fulfilling its statutory duty to determine whether results of presidential preference primary, as certified by Board of Elections and Ethics, were in fact the true results it was the duty of the court to attempt to discern the intent of the voters; standard to be applied in determining intent was not one of absolute sureness since reasonable certainty was enough. D.C. Code § 1-1111(b). *Gollin v. District of Columbia Board of Elections & Ethics*, 359 A.2d 590, 1976 D.C. App. LEXIS 309 (1976).

Petition challenging refusal of Board of Elections and Ethics to count ballots cast in District of Columbia presidential preference primary and delegate election because voters failed to mark box next to name of candidate or uncommitted slate was not untimely on ground that petitioners did not challenge the form of the ballot before the election since form of the ballot was not the crux of the matter, but, rather, issue was whether the ballots in dispute evidenced an intent sufficient to warrant crediting of those ballots to particular presidential candidates or uncommitted slates. D.C. Code § 1-1111(b). *Gollin v. District of Columbia Board of Elections & Ethics*, 359 A.2d 590, 1976 D.C. App. LEXIS 309 (1976).

Administrative remedy available to individuals or groups who may institute action before the Board of Elections and Ethics by challenge "according to law or regulation" was unavailable as regards challenge to Board's refusal to count over 8,000 ballots cast in the presidential preference primary and delegate election since only law or regulation permitting such challenges pertains to challenges to nominating petitions and challenges to persons who have been allowed to vote by a challenged ballot, none of which situations was involved in instant case. D.C. Code §§ 1-1108(p)(1), 1-1109(e), 1-1111(b). *Gollin v. District of Columbia Board of Elections & Ethics*, 359 A.2d 590, 1976 D.C. App. LEXIS 309 (1976).

Even though it was a matter of common knowledge that there had been problems with election machinery in primary election, unsworn allegations that the election procedures in one ward constituted an election fiasco, that some ballot boxes could have been altered or misplaced, that ballots were mixed together,

that the computerized results were a fiasco, that supervision was lacking, that a voting circular violated fair campaign practices, and that one precinct was located in a physically inadequate room were insufficient to warrant voiding of the election in the ward or to warrant the institution by the court of an ad hoc fact finding process. D.C. Code § 1-1111(b). *Morgan v. Martin*, 327 A.2d 827, 1974 D.C. App. LEXIS 421 (1974).

Where board of elections submitted sworn statements that no ballots were lost or destroyed and that all valid ballots were counted, petition which alleged that candidate for council in the ward was present at recount which decided winning candidate but was not present during the entire duration of a previous recount, and that board of elections failed to assure that program and equipment to count the votes by machine were in working order, failed to maintain adequate security of the ballots, erroneously held recounts, and failed to notify candidate of the first recount did not warrant setting aside the certified results of the election. D.C. Code § 1-1111(b). *Morgan v. Martin*, 327 A.2d 827, 1974 D.C. App. LEXIS 421 (1974).

— Jurisdiction, challenges and contests.

Court of Appeals' jurisdiction to review election is independent of general jurisdiction to review orders and decisions of public agencies, and thus it is not subject to the usual Administrative Procedure Act limitation on jurisdiction to review of contested cases. D.C. Code 1981, §§ 1-1315(b), 11-722. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 1997 D.C. App. LEXIS 39 (1997).

— Limitations and laches, challenges and contests.

Requiring strict compliance with statutorily imposed time limitations is particularly important in election cases in order to maintain stability and continuity in administration of government. D.C. Code 1981, § 1-1315(b). *White v. District of Columbia Bd. of Elections & Ethics*, 537 A.2d 1133, 1988 D.C. App. LEXIS 45 (1988).

Court of Appeals lacked jurisdiction to consider candidate's petition to set aside election for advisory neighborhood commissioner for single member district, as result of candidate's failure to file petition within seven days of certification of election by Board of Elections and Ethics, absent any record basis upon which it could reasonably be concluded that candidate was misled by Board as to certification date or that candidate or his counsel was unaware of certification until after seven-day period had expired; candidate asserted, without providing appropriate affidavit, that unnamed employee of Board misinformed him as to certification

date. D.C. Code 1981, §§ 1-257, 1-258, 1-260(a), 1-268(a, b), 1-1315(b). *White v. District of Columbia Bd. of Elections & Ethics*, 537 A.2d 1133, 1988 D.C. App. LEXIS 45 (1988).

— Nature and elements, challenges and contests.

To sustain their case of invalid election based on fraud, petitioners were required to show that one or more of the challenged voters made willful misrepresentation to Board of Elections and Ethics, known by voter to be false, and that he or she did so with intent to deceive Board and to induce Board to permit him or her to vote unlawfully. D.C. Code 1981, § 1-1315(b). *Allen v. District of Columbia Bd. of Elections & Ethics*, 663 A.2d 489, 1995 D.C. App. LEXIS 158 (1995).

— Presumptions and burden of proof, challenges and contests.

In case of an election of a mayor of the city of Washington, D.C., the return of the commissioners who hold the elections in a particular ward is not conclusive, but is prima facie evidence that the votes were legally cast for the candidate elected, and throws the burden of proof on the person who questions the validity of such candidate's election. U.S. ex rel. *Weightman v. Carbery*, 25 F.Cas. 282, 1822 U.S. App. LEXIS 492 (1822).

To obtain relief on petition challenging certification of election results, the petitioners' burden is not only to show defects or irregularities in the election; petitioners must prove also that the flawed election led to a result that is not "true." *Jackson v. D.C. Bd. of Elections & Ethics*, 770 A.2d 79, 2001 D.C. App. LEXIS 91 (2001).

Sworn voter registration forms create a presumption of eligibility to vote, which the party contesting the election has the burden to rebut. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 717 A.2d 891, 1998 D.C. App. LEXIS 174 (1998).

Where the Board of Elections and Ethics has certified an election, the burden of proof in an action to set it aside is on the party contesting the election. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 717 A.2d 891, 1998 D.C. App. LEXIS 174 (1998).

To void election, party contesting it has burden not only to show defects or irregularities in the election, but also to prove that the flawed election led to a result that was not "true." D.C. Code 1981, § 1-1315(b). *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 717 A.2d 891, 1998 D.C. App. LEXIS 174 (1998).

Party contesting election certified by Board of Elections and Ethics has burden to prove its illegality. *Allen v. District of Columbia Bd. of Elections & Ethics*, 663 A.2d 489, 1995 D.C. App. LEXIS 158 (1995).

Certification of election by Board of Elections and Ethics was not conclusion, but was *prima facie* evidence that challenged votes were good and threw burden of proof on petitioners challenging validity of election. *Allen v. District of Columbia Bd. of Elections & Ethics*, 663 A.2d 489, 1995 D.C. App. LEXIS 158 (1995).

— Review, challenges and contests.

The circuit court of the District of Columbia having adjudged against the right to the office of one claiming to be the mayor of Georgetown, it was held that filing the bond and suing out a writ of error was a supersedeas to the judgment of ouster, and therefore that mandamus would not lie to compel execution of that judgment. *U.S. ex rel. Crawford v. Addison*, 63 U.S. 174, 1859 U.S. LEXIS 711 (U.S. Dist. Col. 1859).

In proceeding challenging validity of Advisory Neighborhood Commission (ANC) elections, challenges to special student ballots, which were not presented to special master appointed to make findings of fact and conclusions of law, were not subject to appellate review. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 717 A.2d 891, 1998 D.C. App. LEXIS 174 (1998).

Although report of special master appointed to make findings of fact and conclusions of law in proceeding challenging Advisory Neighborhood Commission (ANC) elections did not address challenge to nine special student ballots, remand was not warranted, since the undisputed facts indicated that sole questionable ballot was not counted, and, therefore, did not impact the outcome of the election. D.C. Code 1981, § 1-1315(b). *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 717 A.2d 891, 1998 D.C. App. LEXIS 174 (1998).

Court of Appeals' deference to findings of Board of Elections and Ethics is especially appropriate where decision was based in part on its assessment of credibility of witnesses. D.C. Code 1981, § 1-1510(a)(3)(E). *Allen v. District of Columbia Bd. of Elections & Ethics*, 663 A.2d 489, 1995 D.C. App. LEXIS 158 (1995).

In Court of Appeals' consideration of disposition of Board of Elections and Ethics of closely contested election, scope of review is limited; Court of Appeals must accept Board's findings of fact so long as they are supported by substantial evidence on record as whole. D.C. Code 1981, § 1-1510(a)(3)(E). *Allen v. District of Columbia Bd. of Elections & Ethics*, 663 A.2d 489, 1995 D.C. App. LEXIS 158 (1995).

Burden placed on candidates to learn when certification of election will occur, for purposes of seeking judicial review, was consistent with due process notice requirements. D.C. Code 1981, §§ 1-257, 1-258, 1-260(a), 1-268(a, b), 1-1315(b); U.S. Const. Amend. 5. *White v. Dis-*

trict of Columbia Bd. of Elections & Ethics, 537 A.2d 1133, 1988 D.C. App. LEXIS 45 (1988).

— Scope of inquiry, challenges and contests.

Insofar as legal conclusions of Board of Elections and Ethics are concerned, Court of Appeals must defer to its interpretation of statute which it administers and, especially, of regulations which it has promulgated, so long as that interpretation is not plainly wrong or inconsistent with legislative purpose. *Allen v. District of Columbia Bd. of Elections & Ethics*, 663 A.2d 489, 1995 D.C. App. LEXIS 158 (1995).

When Board of Elections and Ethics applies and interprets its own regulations, court must defer to the Board and may not substitute its own interpretation unless agency's construction is clearly erroneous. *Pendleton v. District of Columbia Bd. of Elections & Ethics*, 449 A.2d 301, 1982 D.C. App. LEXIS 405 (1982).

Purpose of Court of Appeals in reviewing elections is merely to insure that no voter is disenfranchised through improper interpretation by the Board of Elections and Ethics, that results certified by Board are in fact the true results, and that Board performed its duty in constitutionally and statutorily correct manner. D.C. Code 1973, § 1-1111(b). *Pendleton v. District of Columbia Bd. of Elections & Ethics*, 433 A.2d 1102, 1981 D.C. App. LEXIS 329 (1981), vacated by 449 A.2d 301, 1982 D.C. App. LEXIS 405 (D.C. 1982).

When Board of Elections and Ethics, in particular situation, has attempted to define and apply its own regulations, Court of Appeals is governed by prescribed reasonableness standard and cannot substitute different judgment for reasonable Board action. *Pendleton v. District of Columbia Bd. of Elections & Ethics*, 433 A.2d 1102, 1981 D.C. App. LEXIS 329 (1981), vacated by 449 A.2d 301, 1982 D.C. App. LEXIS 405 (D.C. 1982).

When questions of law or statutory interpretation are presented to Board of Elections and Ethics, standard of review permits Court of Appeals to decide such issues. *Pendleton v. District of Columbia Bd. of Elections & Ethics*, 433 A.2d 1102, 1981 D.C. App. LEXIS 329 (1981), vacated by 449 A.2d 301, 1982 D.C. App. LEXIS 405 (D.C. 1982).

— Weight and sufficiency of evidence, challenges and contests.

Fraud in election must be proved by clear and convincing evidence. D.C. Code 1981, § 1-1315(b). *Allen v. District of Columbia Bd. of Elections & Ethics*, 663 A.2d 489, 1995 D.C. App. LEXIS 158 (1995).

Board of Elections and Ethics having ruled against petitioners on their allegations of fraud by challenged voters, petitioners had to demon-

strate to Court of Appeals that Board acted unreasonably or arbitrarily in finding that fraud had not been proved; petitioners had to show that record, viewed in light most favorable to successful candidate, compelled finding, by clear and convincing evidence, that one or more of the challenged voters voted fraudulently. D.C. Code 1981, § 1-1315(b). *Allen v. District of Columbia Bd. of Elections & Ethics*, 663 A.2d 489, 1995 D.C. App. LEXIS 158 (1995).

Petitioners challenging contesting election on ground of fraud by successful candidate's camp fell short of proving that finding of willful fraud was mandated by evidence that no impartial trier of fact could reasonably find otherwise, where, at most, petitioners raised some suspicion that one or more of the four challenged voters voted illegally. D.C. Code 1981, § 1-1315(b). *Allen v. District of Columbia Bd. of Elections & Ethics*, 663 A.2d 489, 1995 D.C. App. LEXIS 158 (1995).

Board of Elections and Ethics could reasonably decline to credit affidavit of unsuccessful candidate contesting election results describing what someone else allegedly said to her about one voter's actual place of residence over sworn statement of voter himself, for purposes of determining whether vote was invalid. D.C. Code 1981, § 1-1315(b). *Allen v. District of Columbia Bd. of Elections & Ethics*, 663 A.2d 489, 1995 D.C. App. LEXIS 158 (1995).

Exhaustion of remedies.

Petitioners, seeking review of refusal of

Board of Elections and Ethics to count over 8,000 ballots cast in District of Columbia presidential preference primary and delegate election, exhausted whatever administrative remedies they had when they participated in the hearing conducted by the Board and urged that the votes be counted; exhaustion of administrative remedies doctrine did not require a petition for rehearing or require petitioners to initially seek relief from credentials committee of the national political party. D.C. Code§ 1-1111(b). *Gollin v. District of Columbia Board of Elections & Ethics*, 359 A.2d 590, 1976 D.C. App. LEXIS 309 (1976).

Residence.

Voter who moved out of his old residence on April 30, 1995, even though, according to his declaration, he had right to remain there until May 4, 1995, and voted in election held on May 2, 1995 in ward in which his former residence was located did not vote illegally, where election was held on date on which voter was, for practical purposes, between two residences, and there was no suggestion that voter voted twice and vote totals would have been same if voter had cast his vote in different precinct. D.C. Code 1981, §§ 1-1311(i)(1), 1-1315(b); D.C. Mun.Reg. title 3, § 710.6. *Allen v. District of Columbia Bd. of Elections & Ethics*, 663 A.2d 489, 1995 D.C. App. LEXIS 158 (1995).

§ 1-1001.12. Interference with registration and voting.

No one shall interfere with the registration or voting of another person, except as it may be reasonably necessary in the performance of a duty imposed by law.

(Aug. 12, 1955, 69 Stat. 703, ch. 862, § 12.)

Prior Codifications. — 1981 Ed., § 1-1316. 1973 Ed., § 1-1112.

§ 1-1001.13. Appropriations.

There are hereby authorized to be appropriated, out of any money in the Treasury to the credit of the District of Columbia not otherwise appropriated, such sums as are necessary to carry out the purposes of this subchapter.

(Aug. 12, 1955, 69 Stat. 704, ch. 862, § 13; Oct. 4, 1961, 75 Stat. 819, Pub. L. 87-389, § 1(21, 22, 23); Sept. 22, 1970, 84 Stat. 854, Pub. L. 91-405, title II, § 205(3) (m), (n); Dec. 23, 1971, 85 Stat. 793, Pub. L. 92-220, § 1(23)-(25), (27); Aug. 14, 1974, 88 Stat. 471, Pub. L. 93-376, title VII, § 706(a).)

Section references. — This section is referred to in § 1-1001.14.

Prior Codifications. — 1981 Ed., § 1-1317. 1973 Ed., § 1-1113.

§ 1-1001.14. Corrupt election practices.

(a) Any person who shall register, or attempt to register, or vote or attempt to vote under the provisions of this subchapter and make any false representations as to his or her qualifications for registering or voting or for holding elective office, or be guilty of violating § 1-1001.07(d)(2)(D), § 1-1001.09, § 1-1001.12, or § 1-1001.13 or be guilty of bribery or intimidation of any voter at an election, or being registered, shall vote or attempt to vote more than once in any election so held, or shall purloin or secrete any of the votes cast in an election, or attempt to vote in an election held by a political party other than that to which he or she has declared himself or herself to be affiliated, or, if employed in the counting of votes in any election held pursuant to this subchapter, knowingly make a false report in regard thereto, and every candidate, person, or official of any political committee who shall knowingly make any expenditure or contribution in violation of subchapter I of Chapter 11 of this title, shall, upon conviction, be fined not more than \$10,000 or be imprisoned not more than 5 years, or both.

(a-1)(1) A person shall not knowingly or willfully:

(A) Pay, offer to pay, or accept payment of any consideration, compensation, gratuity, reward, or thing of value for registration to vote or for voting;

(B) Give false information as to his or her name, address, or period of residence for the purpose of establishing his eligibility to register or vote, that is known by the person to be false;

(C) Procure or submit voter registration applications that are known by the person to be materially false, fictitious, or fraudulent;

(D) Procure, cast, or tabulate ballots that are known by the person to be materially false, fictitious, or fraudulent; or

(E) Conspire with another individual to do any of the above.

(2) A person who violates paragraph (1) of this subsection shall, upon conviction, be fined not more than \$10,000, be imprisoned not more than 5 years, or both.

(b)(1) Any person who signs an initiative, referendum or recall petition with any other than his or her own name, or who signs a petition for an initiative, referendum or recall measure, knowing that he or she is not a registered qualified elector in the District of Columbia, or who makes a false statement as to his or her residency on any such petition, shall upon conviction be fined not more than \$10,000 or be imprisoned not more than 1 year, or both.

(2) Any public officer, involved in any part of the election process, who willfully violates any of the provisions of § 1-1001.16 or § 1-1001.17, shall be fined not more than \$10,000 or be imprisoned not more than 1 year, or both.

(3) Any person who: (A) For any consideration, compensation, gratuity, reward or thing of value or promise thereof, signs or promises to sign or declines to sign, or promises not to sign any initiative, referendum, or recall petition; or (B) pays or offers or promises to pay, or gives or offers or promises to give any consideration, compensation, gratuity, reward, or thing of value to any person to induce him or her to sign or not to sign, his or her signatures upon any initiative, referendum, or recall petition, or to vote for or against, or

to abstain from voting on, any initiative, referendum, or recall measure; or (C) by any other corrupt means or practice, or by threats or intimidation, interferes with, or attempts to interfere with, the right of any qualified registered elector to sign or not to sign any initiative, referendum, or recall petition, or to vote for or against, or to abstain from voting on any initiative, referendum, or recall measure; or (D) makes any false statement to the Board concerning any initiative, referendum, or recall petition, or the signatures appended thereto shall be fined not more than \$10,000 or be imprisoned not more than 1 year, or both.

(4) Any proposer or circulator of an initiative, referendum, or recall petition who willfully violates any provision of §§ 1-1001.16 and 1-1001.17 shall, upon conviction thereof, be subject to a fine of not more than \$10,000 or to imprisonment of not more than 6 months, or both. Each occurrence of a violation of §§ 1-1001.16 and 1-1001.17 shall constitute a separate offense. Violations of §§ 1-1001.16 and 1-1001.17 shall be prosecuted in the name of the District of Columbia by the Corporation Counsel of the District of Columbia.

(b-1)(1) A person who, during the period beginning 30 days before any election or referendum, initiative, or recall and ending 4 days after the election, referendum, initiative, or recall, intentionally removes, defaces, damages, or destroys any lawfully placed billboard, poster, sign, or other material relating to any candidate for election for any office or to a referendum, initiative, or recall, shall be subject to imposition of civil fines, penalties, and fees for a civil infraction pursuant to Chapter 18 of Title 2 [§ 2-1801.01 et seq.].

(2) A person who violates paragraph (1) of this subsection shall be fined not more than \$100.

(3) This subsection shall not apply to:

- (A) The candidate for election;
- (B) A sponsor of a referendum, initiative, or recall;
- (C) The owner of the material;
- (D) The owner of the premises where the material is located;
- (E) Persons authorized and acting on behalf of the owner of the material or the premises; or

(F) Any person charged with enforcement of any law of the District of Columbia acting within the scope of his or her authority.

(c) The provisions of this section shall be supplemental to, and not in derogation of, any penalties under other laws of the District of Columbia.

(Aug. 12, 1955, 69 Stat. 704, ch. 862, § 14; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 1(24); Sept. 22, 1970, 84 Stat. 854, Pub. L. 91-405, title II, § 205(k); Dec. 16, 1975, D.C. Law 1-37, § 2(8), 22 DCR 3430; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; June 7, 1979, D.C. Law 3-1, § 2(b), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 2(i), (n), (o), (q), 29 DCR 458; Sept. 22, 1994, D.C. Law 10-173, § 2(f), 41 DCR 5154; July 25, 1995, D.C. Law 11-30, § 2(d), 42 DCR 1547; Dec. 10, 2009, D.C. Law 18-88, § 201, 56 DCR 7413; Mar. 31, 2011, D.C. Law 18-330, § 2(c), 58 DCR)

Cross references. — Election campaigns, lobbying, and conflicts of interest, violation of laws, prosecutions, see § 1-1107.01.

Section references. — This section is referred to in §§ 1-1001.02, and 1-1001.07.

Prior Codifications. — 1981 Ed., § 1-1318. 1973 Ed., § 1-1114.

Effect of amendments. — D.C. Law 18-88 added subsec. (b-1).

D.C. Law 18-330 added subsec. (a-1).

Emergency legislation. — For temporary (90 day) amendment of section, see § 201 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 201 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 1-37. — For legislative history of D.C. Law 1-37, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 3-1. — For legislative history of D.C. Law 3-1, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 10-173. — For legislative history of D.C. Law 10-173, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 11-30. — For legislative history of D.C. Law 11-30, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 18-88. — Law 18-88, the “Omnibus Public Safety and Justice Amendment Act of 2009”, as introduced in Council and assigned Bill No. 18-151, which was referred to the Committee on Public Safety and the Judiciary. The bill as adopted on first and second readings on June 30, 2009, and July 31, 2009, respectively. Signed by the Mayor on August 26, 2009, it was assigned Act No. 18-189 and transmitted to both Houses of Congress for its review. D.C. Law 18-88 became effective on December 10, 2009.

Legislative history of Law 18-330. — For history of Law 18-330, see notes under § 1-1001.05.

CASE NOTES

ANALYSIS

Validity.

Voter intimidation.

Validity.

Rule of Board of Elections and Ethics of District of Columbia permitting the Board to consider as valid a signature on an initiative petition that has been solicited by a circulator who has not complied with provisions of District of Columbia statute requiring such circulator to be a registered voter was valid and noncompliance by the circulator need not, as a matter of law, have invalidated any signature so long as criminal sanctions were pursued. D.C. Code §§ 1-1114(b)(3), 1-1116(h). *Citizens against Legalized Gambling v. District of Columbia Board of Elections & Ethics*, 501 F. Supp. 786, 1980 U.S. Dist. LEXIS 16277 (1980).

Voter intimidation.

Federal court would not enjoin District of

Columbia election board's hearing to determine whether winning candidate should be prosecuted for alleged voter intimidation, given that election board was not acting in bad faith by holding hearing and hearing would not impermissibly chill candidate's First Amendment rights. U.S. Const. Amend. 1; D.C. Code 1981, § 1-1318. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 946 F. Supp. 80, 1996 U.S. Dist. LEXIS 17972 (1996).

District of Columbia election board's hearing to determine whether winning candidate should be prosecuted for alleged voter intimidation would have only minimal chilling effect on candidate's speech, and therefore injunctive relief was not warranted, as candidate had already completed dissemination of her information and elections had already occurred. U.S. Const. Amend. 1; D.C. Code 1981, § 1-1318. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 946 F. Supp. 80, 1996 U.S. Dist. LEXIS 17972 (1996).

§ 1-1001.15. Candidacy for more than 1 office prohibited; multiple nominations; candidacy of officeholder for another office restricted.

(a) No person shall be a candidate for more than 1 office on the Board of Education or the Council or Mayor in any election for the members of the Board of Education or the Council or Mayor, and no person shall be a candidate for more than 1 office on the Council or for the Mayor in any primary election. If a person is nominated for more than 1 such office, he or she shall, within 3 days after the Board has sent him notice that he or she has been so nominated, designate in writing the office for which he or she wishes to run, in which case he or she will be deemed to have withdrawn all other nominations. In the event that such person fails within such 3-day period to file such a designation with the Board, all such nominations of such person shall be deemed withdrawn.

(b) Notwithstanding the provisions of subsection (a) of this section, a person holding the office of Mayor, Delegate, Chairman or member of the Council, or member of the Board of Education shall, while holding such office, be eligible as a candidate for any other of such offices in any primary or general election. In the event that said person is elected in a general election to the office for which he or she is a candidate, that person shall, within 24 hours of the date that the Board certifies said person's election, pursuant to subsection (a)(11) of § 1-1001.05, either resign from the office that person currently holds or shall decline to accept the office for which he or she was a candidate. In the event that said person elects to resign, said resignation shall be effective not later than 24 hours before the date upon which that person would assume the office to which he or she has been elected.

(Aug. 12, 1955, 69 Stat. 704, ch. 862, § 15; as added Apr. 22, 1968, 82 Stat. 106, Pub. L. 90-292, § 4(9); Dec. 24, 1973, 87 Stat. 835, Pub. L. 93-198, title VII, § 751(9), (10); Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 2, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 2(j), (o), (q), 29 DCR 458; Mar. 14, 1985, D.C. Law 5-159, § 22, 32 DCR 30.)

Prior Codifications. — 1981 Ed., § 1-1319. 1973 Ed., § 1-1115.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 4-88. — For

legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 5-159. — Law 5-159 was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984 and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

CASE NOTES

Validity.

District of Columbia Election Act section which required that person holding any of certain offices resign before filing nominating petition for any of certain other offices if such

other office had term beginning prior to end of term of office presently held created distinction between those holding coincident and noncoincident terms which was not justified by any rational governmental purpose and thus

violated equal protection guaranty of Fifth Amendment. U.S. Const. Amend. 5; D.C. Code § 1-1115(b). *Barry v. District of Columbia Board of Elections & Ethics*, 448 F. Supp. 1249, 1978 U.S. Dist. LEXIS 18373 (1978), appeal dismissed by 580 F.2d 695, 188 U.S. App. D.C. 432, 1978 U.S. App. LEXIS 10640 (1978).

Section of District of Columbia Election Act providing that no person holding any of certain offices shall be eligible to run as candidate for any other of such offices in any primary or general election unless term of office which he holds expires on or prior to date on which he would be eligible to take office if elected and which required resignation before filing nominating petition for different office having term not coincident with office presently held was unconstitutional, in view of fact that statute was not shown to promote any cognizable objective which could justify restriction of First Amendment rights. U.S. Const. Amend. 1; D.C.

Code § 1-1115(b). *Barry v. District of Columbia Board of Elections & Ethics*, 448 F. Supp. 1249, 1978 U.S. Dist. LEXIS 18373 (1978), appeal dismissed by 580 F.2d 695, 188 U.S. App. D.C. 432, 1978 U.S. App. LEXIS 10640 (1978).

Section of District of Columbia Election Act providing that person holding one of several specified offices is not eligible to run as candidate for any of those offices unless term of office held expires prior to date person would take office if elected to new office did not restrict any constitutionally fundamental right of free speech, and thus impairment of officers' rights did not warrant strict constitutional scrutiny. U.S. Const. Amend. 1; D.C. Code § 1-1115(b). *Barry v. District of Columbia Board of Elections & Ethics*, 448 F. Supp. 1249, 1978 U.S. Dist. LEXIS 18373 (1978), appeal dismissed by 580 F.2d 695, 188 U.S. App. D.C. 432, 1978 U.S. App. LEXIS 10640 (1978).

§ 1-1001.16. Initiative and referendum process.

(a)(1) Any registered qualified elector, or electors of the District of Columbia, who desire to submit a proposed initiative measure to the electors of the District of Columbia, or who desire to order that a referendum be held on any act, or on some part or parts of an act, that has completed the course of the legislative process within the District of Columbia government in accordance with § 1-204.04(e), shall file with the Board 5 printed or typewritten copies of the full text of the measure, a summary statement of not more than 100 words, and a short title of the measure to be proposed in an initiative, or of the act or part thereof on which a referendum is desired.

(2) The proposed initiative measure, or the act or part thereof, on which a referendum is desired shall be accompanied by:

(A) The name and address of the proposer; and

(B) An affidavit that the proposer is a registered qualified elector of the District of Columbia.

(b)(1) Upon receipt of each proposed initiative or referendum measure, the Board shall refuse to accept the measure if the Board finds that it is not a proper subject of initiative or referendum, whichever is applicable, under the terms of title IV of the District of Columbia Home Rule Act, or upon any of the following grounds:

(A) The verified statement of contributions has not been filed pursuant to D.C. Code §§ 1-1163.07 and 1-1163.09;

(B) The petition is not in the proper form established in subsection (a) of this section;

(C) The measure authorizes, or would have the effect of authorizing, discrimination prohibited under Chapter 14 of Title 2; or

(D) The measure presented would negate or limit an act of the Council of the District of Columbia pursuant to § 1-204.46.

(2) In the case of refusal to accept a measure, the Board shall endorse on the measure the words "received but not accepted" and the date, and retain the

measure pending appeal. If none of the grounds for refusal exists, the Board shall accept the measure.

(3) If the Board refuses to accept any initiative or referendum measure submitted to it, the person or persons submitting such measure may apply, within 10 days after the Board's refusal to accept such measure, to the Superior Court of the District of Columbia for a writ in the nature of mandamus to compel the Board to accept such measure. The Superior Court of the District of Columbia shall expedite consideration of the matter. If the Superior Court of the District of Columbia determines that the issue presented by the measure is a proper subject of initiative or referendum, whichever is applicable, under the terms of title IV of the District of Columbia Home Rule Act, and that the measure is legal in form, does not authorize discrimination as prescribed in paragraph (1)(C) of this subsection, and would not negate or limit an act of the Council of the District of Columbia as prescribed in paragraph (1)(D) of this subsection, it shall issue an order requiring the Board to accept the measure. Should the Superior Court of the District of Columbia hold in favor of the proposer, it may award court costs and reasonable attorneys' fees to the proposer.

(4) After subject determination has been made the Board shall assign a serial number to each initiative and referendum measure, using separate series of numbers for initiative and separate series of numbers for referendum measures. Thereafter, a measure shall be known and designated on all petitions, ballots and proceedings as "Initiative Measure No." or "Referendum Measure No.".

(c) Within 20 calendar days, of the date on which the Board accepts an initiative or referendum measure, the Board shall:

(1) Prepare a true and impartial summary statement, not to exceed 100 words, bearing the serial number of the measure, and expressing the purpose of the measure. Such statement shall not intentionally create prejudice for or against the measure;

(2) Prepare a short title for the measure consisting of not more than 15 words to permit the voters to identify readily the initiative or referendum measure and to distinguish it from other measures which may appear on the ballot; and

(3) Prepare, in the proper legislative form, the proposed initiative or referendum measure, where applicable, which shall conform to the legislative drafting format of acts of the Council of the District of Columbia. The Board may consult experts in the field of legislative drafting, including, but not limited to, Corporation Counsel of the District of Columbia and officers of the Council of the District of Columbia for the purpose of preparing the measure in its proper legislative form.

(d) After preparation, the Board shall adopt the summary statement, short title, and legislative form at a public meeting and shall within 5 days, notify the proposer of the measure of the exact language. In addition, the Board, within 5 days of adoption, shall submit the summary statement, short title, and legislative form to the District of Columbia Register for publication.

(e)(1)(A) If any registered qualified elector of the District of Columbia objects to the summary statement, short title, or legislative form of the

initiative measure formulated by the Board pursuant to subsections (c) and (d) of this section, that person may seek review in the Superior Court of the District of Columbia within 10 calendar days from the date the Board publishes the summary statement, short title, and legislative form in the District of Columbia Register stating objections and requesting appropriate changes. The Superior Court of the District of Columbia shall expedite the consideration of this matter.

(B) If any registered qualified elector of the District of Columbia objects to the summary statement, short title, or legislative form of the referendum measure formulated by the Board pursuant to subsection (c) of this section, that person may seek review in the Superior Court of the District of Columbia within 10 calendar days from the date the Board publishes the summary statement, short title, and legislative form in at least one newspaper of general circulation stating objections and requesting appropriate changes. The Superior Court of the District of Columbia shall expedite the consideration of this matter.

(2) Should no review in the Superior Court of the District of Columbia be sought as provided in paragraph (1) of this subsection, the proposed summary statement, short title and legislative form shall be deemed to be accepted.

(3) Should the Superior Court of the District of Columbia hold in favor of the proposer, it may award court costs and reasonable attorney's fees to the proposer.

(f) When the summary statement, short title, and legislative form of an initiative or referendum measure has been established pursuant to subsection (e) of this section, the Board shall certify such and transmit a copy thereof by certified mail to the proposer. Thereafter, such short title shall be the title of the measure in all petitions, ballots, and other proceedings relating thereto. The Board shall, upon the request of any person, make single copies of the approved short title, summary statement, and full legislative text available at no charge. Additional copies shall be made available at a nominal cost.

(g) Upon final establishment of the summary statement, short title, and legislative form of an initiative or referendum proposal, the Board shall prepare and provide to the proposer at a public meeting an original petition form which the proposer shall formally adopt as his or her own form. The proposer shall print from the original blank petition sheets on white paper of good writing quality of the same size as the original. Each initiative or referendum petition sheet shall consist of one double-sided sheet providing numbered lines for 20 printed names and signatures with residence addresses (street numbers) and ward numbers, and shall have printed on it, in a manner prescribed by the Board, the following:

(1) A warning statement that declares that only duly registered voters of the District of Columbia may sign the petition;

(2) A statement that requests that the Board hold an election on the initiative or referendum measure that states the measure's serial number and short title; and

(3) The text of the official summary and short title of the measure printed on the front of the petition sheet.

(h) Each petition sheet for an initiative or referendum measure shall contain an affidavit, made under penalty of perjury, in a form determined by the Board and signed by the circulator of that petition sheet which contains the following:

- (1) The printed name of the circulator;
- (2) The residence address of the circulator, giving the street number;
- (3) That the circulator of the petition sheet was in the presence of each person when the appended signature was written;
- (4) That according to the best information available to the circulator, each signature is the genuine signature of the person it purports to be;
- (5) That the circulator of the initiative or referendum petition sheet is a resident of the District of Columbia and at least 18 years of age; and
- (6) The dates between which the signatures to the petition were obtained.

(i) In order for any initiative or referendum measure to qualify for the ballot for consideration by the electors of the District of Columbia, the proposer of such an initiative or referendum measure shall secure the valid signatures of registered qualified electors upon the initiative or referendum measure equal in number to 5 percent of the registered electors in the District of Columbia: Provided, that the total signatures submitted include 5 percent of the registered electors in each of 5 or more of the 8 wards. The number of registered electors which is used for computing these requirements shall be consistent with the latest official count of registered electors made by the Board 30 days prior to the initial submission to the Board of the initiative or referendum measure, pursuant to subsection (a) of this section.

(j)(1) A proposer of an initiative measure shall have 180 calendar days, beginning on the 1st calendar day immediately following the date upon which the Board certifies, according to subsection (h) [subsection (f)] of this section, that the petition form of such initiative measure is in its final form to secure the proper number of valid signatures needed on the initiative petition to qualify such a measure for the ballot, pursuant to subsection (i) of this section and to file such petition with the Board.

(2) A proposer of a referendum measure shall secure the proper number of valid signatures needed on the referendum petition to qualify such a measure for the ballot pursuant to subsection (i) of this section, and shall file such petition with the Board before the act, or part thereof, which is the subject of the referendum has become law according to the provisions of §§ 1-204.04 and 1-206.02(c). No act is subject to referendum if it has taken effect according to the provisions of § 1-206.02(c).

(3) The proposer may not begin circulating an initiative or referendum petition until the Board has certified pursuant to subsection (h) [subsection (f)] of this section that such petition is in its final form.

(k)(1) Upon submission of an initiative or referendum petition by the proposer to the Board, the Board shall refuse to accept the petition upon any of the following grounds:

- (A) The petition is not in the proper form established in subsection (g) of this section;
- (B) The time limitation established in subsection (j) of this section

within which the petition may be circulated and submitted to the Board has expired;

(C) The petition on its face clearly bears an insufficient number of signatures;

(D) The petition sheets do not have attached to them the statements of the circulators as provided in subsection (h) of this section; or

(E) The petition was circulated by persons who were not residents of the District of Columbia and at least 18 years of age at the time of circulation.

(2) In the case of refusal to accept a petition, the Board shall endorse on the petition the words "submitted but not accepted" and the date, and retain the petition pending appeal. If none of the grounds for refusal exists, the Board shall accept the petition.

(l) If the Board refuses to accept an initiative or referendum petition when submitted to it, the person or persons submitting such petition may apply, within 10 days after the Board's refusal to accept such petition, to the Superior Court of the District of Columbia for a writ in the nature of mandamus to compel the Board to accept such petition. The Superior Court of the District of Columbia shall expedite the consideration of the matter. If the Superior Court of the District of Columbia determines that the petition is legal in form and apparently meets the requirement for signatures, both as to number and as to ward distribution, prescribed in subsection (i) of this section, and was submitted within the time limitations established in subsection (j) of this section, and has attached to the petition the proper statements of the circulators prescribed in subsection (h) of this section, it shall issue an order requiring the Board to accept the petition as of the date of submission for filing. Should the Superior Court of the District of Columbia hold in favor of the proposer, it may award court costs and reasonable attorneys' fees to the proposer.

(m) Upon submission of a referendum petition to the Board, the Board shall notify the appropriate custodian of the act of the Council of the District of Columbia which is the subject of the referendum (either the President of the Senate and the Speaker of the House of Representatives) as provided in §§ 1-204.04 and 1-204.46 and the President of the Senate and the Speaker of the House of Representatives shall, as appropriate, return such act or part or parts of such act to the Chairman of the Council of the District of Columbia. No further action may be taken upon such act until after a referendum election is held. If, however, after the counting and validation procedure for signatures, which takes place pursuant to subsection (o) of this section, the referendum measure fails to meet the percentage and distribution requirements for signatures established in subsection (i) of this section, the act which was the subject of the referendum shall be again transmitted to the Congress for review as provided in § 1-206.02(c).

(n) When the Board accepts an initiative or referendum petition, whether in the normal course or at the direction of a court, the Board may detach, in the presence of the person submitting the petition or his or her designated representative, if he or she desires to be present, the sheets containing the signatures, and cause all of them to be firmly attached to 1 or more printed copies of the proposed initiative or referendum measure in such books or

volumes as will be most convenient for counting, canvassing, and validating names and signatures.

(o)(1) After acceptance of an initiative or referendum petition, the Board shall certify, within 30 calendar days after such petition has been accepted, whether or not the number of valid signatures on the initiative or referendum petition meets the qualifying percentage and ward distribution requirements established in subsection (i) of this section, and whether or not the necessary number of names and signatures of registered qualified electors of the District of Columbia, properly distributed by wards, appear on the initiative or referendum petition. This certification may be by a bona fide random and statistical sampling method. If the Board finds that the same person has signed a petition for the same initiative or referendum measure more than once, it shall count only 1 signature of such person. If a person who signs a petition is found to be a qualified registered elector in a ward other than that which was indicated on the petition sheet, such person shall be counted from the correct ward in determining whether or not an initiative or referendum measure qualifies for the ballot. Two persons representing the proposer(s) may be present during the counting and validation procedures. Should a political committee or committees exist in opposition to a particular proposed initiative or referendum measure, 2 persons representing such committee or committees may be present during the counting and validation procedures. The Board shall post, by making available for public inspection, petitions for initiatives or referenda, or facsimiles thereof, in the office of the Board, for 10 days, including Saturdays, Sundays, and holidays, beginning on the 3rd day after the petitions are filed. Any qualified elector may, within such 10-day period, challenge the validity of any petition, by a written statement duly signed by the challenger and filed with the Board, specifying concisely the alleged defects in such petition. The provisions of § 1-1001.08(o)(2) shall be applicable to such challenge. The Board may issue supplemental rules concerning the challenge of such petitions.

(2) For the purpose of verifying a signature on any petition filed pursuant to this section, the Board shall first determine that the address on the petition is the same as the residence shown on the signer's voter registration record. If the address is different, the signature shall not be counted as valid unless the Board's records show that the person was registered to vote from the address listed on the petition at the time the person signed the petition.

(p)(1) After determining that the number and validity of signatures on the initiative or referendum petition meet the qualification standards established under this section, the Board shall certify the sufficiency of the initiative or referendum petition and shall certify that the initiative or referendum measure will appear on the ballot. The Board shall conduct an election on an initiative measure at the next primary, general, or city-wide special election held at least 90 days after the date on which the measure has been certified as qualified to appear on the ballot. The Board shall conduct an election on a referendum measure within 114 days after the date the measure has been certified as qualified to appear on the ballot. In the case of a referendum measure, if a previously scheduled general, primary, or special election will

occur between 54 and 114 days after the date the measure has been certified as qualified to appear on the ballot, the Board may present the referendum measure at that election.

(2) The Board shall publish the established legislative text of an initiative or referendum measure in no less than 2 newspapers of general circulation in the District of Columbia within 30 calendar days after the date upon which the Board certifies, pursuant to paragraph (1) of this subsection, that the measure has qualified for appearance on an election ballot.

(q)(1) Upon qualification of an initiative measure, the Board shall place on the ballot the serial number of the initiative and its short title and summary statement in substantially the following form:

INITIATIVE MEASURE No.
(SHORT TITLE)
(SUMMARY STATEMENT)
FOR Initiative Measure No.
AGAINST Initiative Measure No.

(2) Upon qualification of a referendum measure, the Board shall place on the ballot the serial number of the referendum measure and its short title and summary statement in substantially the following form:

REFERENDUM MEASURE No.
(SHORT TITLE)
(SUMMARY STATEMENT)

(A) If the referendum concerns whether the registered voters of the District of Columbia approve or reject the act, then the ballot shall state:

Shall the registered voters of the District of Columbia approve or reject Act (insert Act number)?

YES, to approve

NO, to reject.

(B) If the referendum concerns part or parts of an act, then the ballot shall state:

Shall the registered voters of the District of Columbia approve or reject sections (insert section(s) that is the subject of the referendum measure) of Act (insert Act number)?

YES, to approve

NO, to reject.

(r)(1) An initiative measure which has been ratified by a majority of the registered qualified electors voting on the measure shall not take effect until the end of the 30-day congressional review period (excluding Saturdays, Sundays and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than 3 days or an adjournment of more than 3 days) beginning on the day such measure is transmitted to the Speaker of the House of Representatives and the President of the Senate, and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such initiated act.

Upon certification by the Board that the initiative measure has been ratified, the Chairman of the Council shall forthwith transmit the measure to the Speaker of the House of Representatives and to the President of the Senate.

(2) If a majority of the registered qualified electors voting in a referendum on an act or part or parts thereof vote to disapprove the act or part or parts thereof, then such action shall be deemed a rejection of the act or part or parts thereof, and no action by the Council of the District of Columbia may be taken on such act or part thereof for 365 days following the date when the Board certifies the vote concerning the referendum.

(s) If provisions of 2 or more initiative or referendum measures which have been approved by the registered qualified electors at the same election conflict, the provisions of the measure receiving the highest number of affirmative votes shall prevail over the conflicting provision of the other measure.

(Aug. 12, 1955, 69 Stat. 704, ch. 862, § 16, as added June 7, 1979, D.C. Law 3-1, § 2(c), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 2(k), (o), (q), (s), 29 DCR 458; Mar. 16, 1988, D.C. Law 7-92, § 3(n), 35 DCR 716, May 10, 1989, D.C. Law 7-231, § 5, 36 DCR 492; Mar. 11, 1992, D.C. Law 9-75, § 2(e), 39 DCR 310; Feb. 5, 1994, D.C. Law 10-68, § 7(c), 40 DCR 6311; Sept. 22, 1994, D.C. Law 10-173, § 2(g), 41 DCR 5154; July 25, 1995, D.C. Law 11-30, § 2(e), 42 DCR 1547; March 31, 2000, D.C. Law 13-64, § 2, 46 DCR 9219; Apr. 27, 2012, D.C. Law 19-124, § 501(g)(6), 59 DCR 1862.)

Cross references. — Political committees, statements of organization, required disclosures, see § 1-1102.04.

Section references. — This section is referred to in §§ 1-1001.07, 1-1001.11, 1-1001.14, 1-1001.17, 1-1021.03, and 1-1021.04.

Prior Codifications. — 1981 Ed., § 1-1320. 1973 Ed., § 1-1116.

Effect of amendments. — D.C. Law 13-64, rewrote par. (5) of subsec. (h), which previously read: "That the circulator of such initiative or referendum petition sheet is a qualified registered elector of the District of Columbia; and"; and rewrote subpar. (E) of par. (1) of subsec. (k), which previously read: "The petition was circulated by persons who were not qualified registered electors of the District of Columbia pursuant to subsection (h) of this section."

D.C. Law 19-124, in subsec. (b)(1)(A), substituted "§§ 1-1163.07 and 1-1163.09" for "§§ 1-1102.04 and 1-1102.06".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the Petition Circulation Requirements Temporary Amendment Act of 1999 (D.C. Law 13-14, July 17, 1999, law notification 46 DCR 6311).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2 of the Petition Circulation Requirements Emergency Amendment Act of 1999 (D.C. Act 13-51, April 6, 1999, 46 DCR 3636).

For temporary (90-day) amendment of section, see § 2 of the Petition Circulation Re-

quirements Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-284, March 7, 2000, 47 DCR 2031).

For temporary (90 day) amendment of section, see § 401(g)(6) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 3-1. — For legislative history of D.C. Law 3-1, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 7-92. — For legislative history of D.C. Law 7-92, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 7-231. — Law 7-231 was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-75. — For legislative history of D.C. Law 9-75, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 1-1001.07.

Legislative history of Law 10-173. — For legislative history of D.C. Law 10-173, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 11-30. — For legislative history of D.C. Law 11-30, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 13-64. — Law 13-64, the “Petition Circulation Requirements Amendment Act of 1999,” was introduced in

Council and assigned Bill No. 13-82, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on September 21, 1999, and on October 5, 1999, respectively. Signed by the Mayor on October 25, 1999, it was assigned Act No. 13-165 and transmitted to both Houses of Congress for its review. D.C. Law 13-64 became effective on March 31, 2000.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

CASE NOTES

ANALYSIS

Challenges.

Costs.

In general.

Law governing.

Matters subject to initiative.

—Appropriation of funds, matters subject to initiative.

—Improper subjects, matters subject to initiative.

—In General.

—Political rights, matters subject to initiative.

—Proper subjects, matters subject to initiative.

—Unemployment compensation, matters subject to initiative.

Petitions.

Review.

Challenges.

Board of Elections and Ethics prematurely prepared summary statement, short title, and legislative form of proposed initiative after Court of Appeals reversed Board's reliance on two of seven grounds to invalidate initiative and before other challenges to initiative were finally resolved. D.C. Code 1981, § 1-1320(b, c). *Hessey v. Burden*, 615 A.2d 562, 1992 D.C. App. LEXIS 280 (1992), remanded by, appeal dismissed sub nomine *Price v. District of Columbia Bd. of Elections & Ethics*, 645 A.2d 594, 1994 D.C. App. LEXIS 121 (D.C. 1994).

Initiative statute does not require Board of Elections and Ethics or superior court to rule on constitutional challenges before elections. D.C. Code 1981, § 1-1320(b). *Hessey v. Burden*, 615 A.2d 562, 1992 D.C. App. LEXIS 280 (1992), remanded by, appeal dismissed sub nomine *Price v. District of Columbia Bd. of Elections & Ethics*, 645 A.2d 594, 1994 D.C. App. LEXIS 121 (D.C. 1994).

Challenge to decision of Board of Elections and Ethics to accept signatures supporting public initiative whose petition addresses did not match Board's voting roles amounted to challenge to such signatures, which had to be subject of administrative challenge within statutory ten-day period following posting for judicial review to be available; challenge was not

within exception to procedural requirements and was not governed by review procedures set forth in Administrative Procedure Act. D.C. Code 1981, §§ 1-1320(i), (k)(1), (o), 1-1510(a). *Davies v. District of Columbia Bd. of Elections & Ethics*, 596 A.2d 992, 1991 D.C. App. LEXIS 265 (1991).

Board of Elections and Ethics' 30-day period within which to certify an initiative for the ballot and the period within which initiative petitions may be challenged commence once the Board accepts the submitted petitions. D.C. Code 1980 Supp. § 1-1116(o). *Dankman v. District of Columbia Bd. of Elections & Ethics*, 443 A.2d 507, 1981 D.C. App. LEXIS 418 (1981).

Challenge to initiative petitions, which was filed 12 days after acceptance of the petitions by the Board of Elections and Ethics, was timely and therefore Board had jurisdiction to hear it. D.C. Code 1980 Supp. § 1-1116(o). *Dankman v. District of Columbia Bd. of Elections & Ethics*, 443 A.2d 507, 1981 D.C. App. LEXIS 418 (1981).

Presenters of proposed initiative to set aside recognition of same-sex marriage were not required to exhaust their administrative remedies with District of Columbia Board of Elections and Ethics before they could challenge in court the incorporation of Human Rights Act into Charter Amendments Act by a provision of Initiative, Referendum and Recall Procedures Act (IPA); appropriate forum for adjudicating validity of IPA provision was Superior Court, not board, and, further, there was no prejudice to District of Columbia, which had fully briefed the issue, and prompt resolution of issue, rather than waiting for result of remand, would serve IPA's direction for Superior Court to expedite consideration of challenges to board's initiative decisions. *Jackson et al. v. D.C. Board of Elections and Ethics*, 138 WLR 173 (Super. Ct. 2010).

Costs.

Statute [D.C. Code 1981, § 1-1320(b)(3)] authorizing Superior Court to award court costs and reasonable attorneys' fees to proposer of an initiative does not apply to order or judgment of

Superior Court in favor of proposer from which timely appeal is taken, until and unless that judgment is affirmed. District of Columbia Bd. of Elections & Ethics v. Jones, 495 A.2d 752, 1985 D.C. App. LEXIS 429 (1985).

Absent any interpretive guidance from the City Council, Court of Appeals must construe language of D.C. Code 1981, § 1-1320(b)(3) which provides, "should the Superior Court of the District of Columbia hold in favor of the proposer, it may award court costs and reasonable attorneys' fees to the proposer," in manner defying neither common sense nor established rule that complete failure will not justify shifting fees from losing party to winning party. District of Columbia Bd. of Elections & Ethics v. Jones, 495 A.2d 752, 1985 D.C. App. LEXIS 429 (1985).

In general.

Statute denying the District of Columbia authority to "enact any law" reducing penalties associated with possession, use or distribution of marijuana, and removing legislation with that effect from limited right of self-governance granted to the District of Columbia by the Home Rule Act, did not unconstitutionally interfere with First Amendment rights of District of Columbia citizens, by preventing them from using ballot initiative process to enact medical marijuana legislation; statute did not restrict free speech rights of medical marijuana advocates, but only shifted forum of debate from District of Columbia to Congress. Marijuana Policy Project v. United States, 304 F.3d 82, 2002 U.S. App. LEXIS 20863 (C.A.D.C. 2002).

A state has a right to ensure that initiative has a wide-base of support before it is considered by the electorate, but that right does not necessarily extend to individual groups having an interest in the subject matter of the initiative. Citizens against Legalized Gambling v. District of Columbia Board of Elections & Ethics, 501 F. Supp. 786, 1980 U.S. Dist. LEXIS 16277 (1980).

Initiative legislation should be liberally construed to extend its operation rather than to reduce it. Citizens against Legalized Gambling v. District of Columbia Board of Elections & Ethics, 501 F. Supp. 786, 1980 U.S. Dist. LEXIS 16277 (1980).

District Council was not obliged to allow initiatives that would have had the effect of authorizing discrimination prohibited by the Human Rights Act to be put to voters, and then to repeal them, or to wait for them to be challenged as having been improper subjects of initiative, should they be approved by voters; rather, the Council was authorized under the Home Rule Act to legislate, as it did through the Initiative Procedures Act (IPA), that the Board of Elections and Ethics must refuse to accept initiatives and referenda that would

authorize prohibited discrimination. Jackson v. D.C. Bd. of Elections & Ethics, 999 A.2d 89, 2010 D.C. App. LEXIS 400 (2010), writ of certiorari denied by 131 S. Ct. 1001, 178 L. Ed. 2d 827, 2011 U.S. LEXIS 730, 79 U.S.L.W. 3419 (U.S. 2011).

Assuming that proposer of initiative must continue to be a resident of the District of Columbia and a qualified elector throughout the initiative process, rather than merely at the time that he or she initially submits the proposed initiative to the Board of Elections and Ethics, Board is not required to begin process anew when a qualified elector is available to substitute for a proposer who moves away. D.C. Code 1981, § 1-1320(a)(2)(B). Stevenson v. District of Columbia Bd. of Elections & Ethics, 683 A.2d 1371, 1996 D.C. App. LEXIS 201 (1996).

In deciding whether to accept or reject proposed initiative, Board of Elections and Ethics should consider and rule on all challenges to initiative when raised, regardless of merits. D.C. Code 1981, §§ 1-1320, 1-1320(b), (b)(1, 3). Hessey v. Burden, 615 A.2d 562, 1992 D.C. App. LEXIS 280 (1992), remanded by, appeal dismissed sub nomine Price v. District of Columbia Bd. of Elections & Ethics, 645 A.2d 594, 1994 D.C. App. LEXIS 121 (D.C. 1994).

Since amendments to District of Columbia Charter required Congressional approval when initiative right was approved by Congress, court must consider Congressional intent in approving amendment. D.C. Code 1981, § 1-1320. Hessey v. District of Columbia Bd. of Elections & Ethics, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

Summary statement for referendum which would overturn Act of the District of Columbia Council repealing a previously adopted Act imposing strict liability on manufacturers of assault weapons was proper and not misleading; it stated that the Council had previously enacted the Assault Weapons Manufacturing Strict Liability Act, summarized that Act, stated that the Council had passed a repeal of the Act, stated that the referendum would preserve the Strict Liability Act as originally passed and would reject appeal, and told voters to vote for the referendum to keep strict liability in effect and reject the appeal and to vote against the referendum to permit the repeal to become law. Atkinson v. District of Columbia Bd. of Elections & Ethics, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

Right of initiative must be construed liberally, and only those limitations expressed in law or clearly and compellingly implied may be imposed on that right. Hessey v. Burden, 584 A.2d 1, 1990 D.C. App. LEXIS 296 (1990), remanded by 615 A.2d 562, 1992 D.C. App. LEXIS 280 (D.C. 1992).

Initiative, as circulated on petitions, cannot lawfully be changed in any material respect for

submission to District of Columbia voters, and thus attempt to submit initiative measure construed to prohibit only future budget requests for convention center, when initiative on its face purported to prohibit expenditure of appropriated funds as well as future budget requests, as well as initiative measure which constituted impermissible, substantive revision of original bill as summarized on petitions were correctly rejected. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-182, 1-183, 1-1116(i, k). Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Proposed initiative, which sought to bar construction and operation of convention center, and which represented effort through both substantive and fiscal means to reverse legislative policy determination that District of Columbia should build and operate convention center, proposed a "law" within meaning of District of Columbia charter amendments relating to initiative proposals. D.C. Code 1980 Supp. § 1-181(a). Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Provision of Initiative, Referendum and Recall Procedures Act (IPA) that allows District of Columbia Board of Elections and Ethics to reject proposed initiative if measure authorizes or would have effect of authorizing discrimination prohibited the Human Rights Act is consistent with intent of Charter Amendments Act, which defines initiative as 'the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval,' and, therefore, was valid provision; provision did not impermissibly create new exception to initiative right. Jackson et al. v. D.C. Board of Elections and Ethics, 138 WLR 173 (Super. Ct. 2010).

Law governing.

Provision of Initiative, Referendum, and Recall Procedures Act (IPA) on signatures for initiative or referendum petition is invalid to extent that it conflicts with Charter Amendments. D.C. Code 1981, §§ 1-282(a), 1-1320(i). Price v. District of Columbia Bd. of Elections & Ethics, 645 A.2d 594, 1994 D.C. App. LEXIS 121 (1994).

Charter Amendments control over inconsistent provision of Initiative, Referendum, and Recall Procedures Act (IPA). D.C. Code 1981, §§ 1-281 to 1-287, 1-291 to 1-295, 1-1320 to 1-1326. Price v. District of Columbia Bd. of

Elections & Ethics, 645 A.2d 594, 1994 D.C. App. LEXIS 121 (1994).

Matters subject to initiative.

— Appropriation of funds, matters subject to initiative.

Initiative providing for substance abuse treatment as alternative to incarceration for certain drug offenses was an impermissible law appropriating funds in contravention of initiative process; initiative imposed numerous mandatorily-phrased obligations upon trial courts to effectuate its goals, initiative established strict time constraints within which obligations must be satisfied, courts would be unable to comply with mandatory duties in the absence of funding to establish and operate treatment programs contemplated by initiative, initiative did not condition court's compliance upon funding from council, and absent funding, initiative created outcome not weighed by voters and not consistent with purpose for which initiative was enacted. D.C. Bd. of Elections v. District of Columbia, 866 A.2d 788, 2005 D.C. App. LEXIS 14 (2005).

Proposed initiative that would have prohibited "booting" motor vehicles, and required granting amnesty from penalties for late payment of traffic fines was not proper subject of initiative; proposed initiative would have negated Budget Request Act to extent act was based on projected revenues from those sources, and initiative improperly proposed a "laws appropriating funds." D.C. Code 1981, §§ 1-281(a), 1-1320(b)(1)(D), 47-304. Dorsey v. District of Columbia Bd. of Elections & Ethics, 648 A.2d 675, 1994 D.C. App. LEXIS 183 (1994).

Power of purse which Congress delegated to District of Columbia government in Self-Government and Governmental Reorganization Act remains with elected officials of District government and is not subject to control by electorate through initiative. D.C. Code 1981, §§ 1-203, 1-287, 1-1320, 1-1320(b)(1), (b)(1)(D); D.C. Code 1973 Supp., Tit. VII, § 1-184. Hessey v. District of Columbia Bd. of Elections & Ethics, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

Exception to District of Columbia initiative right for "laws appropriating funds" bars any initiative that would halt a project to the extent funds have been requested or appropriated, but leaves within scope of initiative right the power to stop project as of end of fiscal period for which funds have been requested or appropriated, and thus "laws appropriating funds" exception prevents electorate from using initiative to adopt budget request act or make some other affirmative effort to appropriate or to block expenditure of appropriated funds. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980

Supp. §§ 1-181(a), 1-1116(k)(7). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Exception to District of Columbia initiative right for "laws appropriating funds" does not preclude initiatives that establish substantive authorization for new project, that repeal existing substantive authorization for program without rescinding its current funding, or that prohibit future budget requests. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Exception to District of Columbia initiative right for "laws appropriating funds" constitutes operative, substantive limitation on initiative right. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Proposed initiative, which sought to bar construction and operation of District of Columbia convention center by repealing underlying substantive authorization for construction and operation of center and by barring further expenditure of appropriated funds and preventing future appropriation requests, would interdict expenditure of currently appropriated funds and thus was barred by exception to initiative right for "laws appropriating funds" as reflected in amendment prohibiting initiatives that contravene existing budget request act. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7), (l). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Amendment which barred any initiative that would negate or limit a budget request act of District of Columbia Council properly specified limitations that charter amendments placed on initiative right and thus limitations specified by amendment were congruent, with respect to initiatives that contravene existing budget request acts with those inherent in underlying "laws appropriating funds" exception to initiative right. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7), (l). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Where initial plan to build convention center, to finance it in certain manner and to construct

it on specific site had previously been approved, where budget request for funds had been made and funds duly appropriated, and where all that remained was for mayor to continue to provide monies from appropriated funds, initiative which would prohibit mayor and District of Columbia Council from providing any further public funds or incurring any debt for completion of convention center was primarily concerned with administrative and executive functions of mayor, and did not present primarily a legislative matter, and thus proposed initiative concerned improper subject for initiative. D.C. Code 1980 Supp. §§ 1-181 to 1-187, 1-181(a); D.C. Code 1978 Supp. §§ 1-162, 47-221 to 47-228. *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

— Improper subjects, matters subject to initiative.

Neither the Voting Rights Act of 1965 nor the Fifteenth Amendment granted the plaintiff, a business owner in the District of Columbia, an affirmative right to a local referendum on same-sex marriage within the District of Columbia, a question which was governed by local District of Columbia law. *Little v. Fenty*, 689 F.Supp.2d 163, 2010 U.S. Dist. LEXIS 18365 (2010).

A "proper subject" for an ballot initiative in the District of Columbia is one that does not conflict with title IV of the Home Rule Act, does not propose a law appropriating funds, and does not violate the District's anti-discrimination statute. *Marijuana Policy Project v. D.C. Bd. of Elections & Ethics*, 191 F.Supp.2d 196, 2002 U.S. Dist. LEXIS 5242 (2002), reversed by 304 F.3d 82, 353 U.S. App. D.C. 267, 2002 U.S. App. LEXIS 20863 (2002), vacated in part by, reversed by 46 Fed. Appx. 633, 2002 U.S. App. LEXIS 27298 (D.C. Cir. 2002).

The District of Columbia Board of Elections and Ethics may keep a ballot initiative off the ballot if it would be patently unconstitutional if enacted. *Marijuana Policy Project v. D.C. Bd. of Elections & Ethics*, 191 F.Supp.2d 196, 2002 U.S. Dist. LEXIS 5242 (2002), reversed by 304 F.3d 82, 353 U.S. App. D.C. 267, 2002 U.S. App. LEXIS 20863 (2002), vacated in part by, reversed by 46 Fed. Appx. 633, 2002 U.S. App. LEXIS 27298 (D.C. Cir. 2002).

Measure which would intrude upon the discretion of the District of Columbia council to allocate District government revenues in the budget process is not a proper subject for initiative, whether or not the initiative would raise new revenues. *D.C. Bd. of Elections v. District of Columbia*, 866 A.2d 788, 2005 D.C. App. LEXIS 14 (2005).

Initiative to prohibit smoking in indoor workplaces and indoor public places would have

negated or limited restaurant tax revenues relied on by the District of Columbia council and, thus, was not a proper subject matter for an initiative. *Restaurant Association of Metropolitan Washington v. D.C. Board of Elections and Ethics*, 132 WLR 1301 (Super. Ct. 2004).

Initiative measure making certain defendants eligible for court-ordered drug treatment was improper intrusion upon discretion of mayor and District of Columbia Council to allocate amount of funding for drug treatment that they determined could be provided within fiscal limitations facing District government and, as such, violated "laws appropriating funds" exception to right of initiative, even if coerced spending constituted only a very small portion of District's total budget. *D.C. v. D.C. Board of Elections*, 131 WLR 885 (Super. Ct. 2003).

Proposed initiative that, if enacted, would establish that 'only a marriage between a man and a woman [would be] valid or recognized in the District of Columbia' would violate Human Rights Act, which prohibited certain acts for discriminatory reason based on a person's actual or perceived sexual orientation or gender identity, and, accordingly, the District of Columbia Board of Elections and Ethics could reject initiative under provision of Initiative, Referendum and Recall Procedures Act (IPA) that allowed board to reject proposed initiative if measure would authorize or would have effect of authorizing discrimination prohibited under Human Rights Act; under law already in effect, same-sex persons in District of Columbia who were validly married in other states were considered to be validly married in District of Columbia, and initiative, if enacted, would deprive only same-sex persons of legal status, rights, and privileges that they enjoyed as married persons. *Jackson et al. v. D.C. Board of Elections and Ethics*, 138 WLR 173 (Super. Ct. 2010).

Proposed initiative that, if enacted, would establish that 'only a marriage between a man and a woman [would be] valid or recognized in the District of Columbia' would violate Human Rights Act, which prohibited certain acts for a discriminatory reason based on a person's actual or perceived sexual orientation or gender identity, and, accordingly, District of Columbia Board of Elections and Ethics could reject initiative because measure would violate existing District of Columbia law. *Jackson et al. v. D.C. Board of Elections and Ethics*, 138 WLR 173 (Super. Ct. 2010).

— In General.

Question whether measure is proper subject of initiative should be answered in its entirety before summary statement, short title, and legislative form are even prepared. *D.C. Code* 1981, §§ 1-1320, 1-1320(b). *Hessey v. Burden*,

615 A.2d 562, 1992 D.C. App. LEXIS 280 (1992), remanded by, appeal dismissed sub nomine *Price v. District of Columbia Bd. of Elections & Ethics*, 645 A.2d 594, 1994 D.C. App. LEXIS 121 (D.C. 1994).

Proposed initiative's inconsistency with District of Columbia Code or any statute not part of District of Columbia Charter was irrelevant to question whether initiative was proper subject. *D.C. Code* 1981, §§ 1-1320(b)(1), 47-101 et seq. *Hessey v. Burden*, 615 A.2d 562, 1992 D.C. App. LEXIS 280 (1992), remanded by, appeal dismissed sub nomine *Price v. District of Columbia Bd. of Elections & Ethics*, 645 A.2d 594, 1994 D.C. App. LEXIS 121 (D.C. 1994).

Speculative charges about proponent's motives for proposing initiative (Taxpayers' Right to Know Act) allegedly to retaliate against owners of large office buildings as result of success in tax assessment appeals were irrelevant to issue whether proposed initiative was proper subject. *D.C. Code* 1981, § 1-1320(b). *Hessey v. Burden*, 615 A.2d 562, 1992 D.C. App. LEXIS 280 (1992), remanded by, appeal dismissed sub nomine *Price v. District of Columbia Bd. of Elections & Ethics*, 645 A.2d 594, 1994 D.C. App. LEXIS 121 (D.C. 1994).

Since system of government vesting executive/administrative, legislative and judicial functions in separate entities has been established in District of Columbia, nonlegislative matters cannot properly be submitted for initiative without violating sanctity of that division of responsibility, and thus power of electorate to propose laws through initiative is coextensive with power of legislative branch of government to pass legislative acts, ordinances and resolutions, and to make policy decisions, and does not extend to executive/administrative functions. *D.C. Code* 1980 Supp. §§ 1-181 to 1-195, 181(a). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 871, 1980 D.C. App. LEXIS 360 (1980).

— Political rights, matters subject to initiative.

Fact that opponents to another form of ballot contest may, in practice, have an easier time in their challenge did not render void, under equal protection analysis, District of Columbia statute giving opponents ten days to challenge a certified initiative petition. *D.C. Code* § 1-1116(o); *U.S. Const. Amend. 14*. *Citizens against Legalized Gambling v. District of Columbia Board of Elections & Ethics*, 501 F. Supp. 786, 1980 U.S. Dist. LEXIS 16277 (1980).

District of Columbia ten-day statutory period for any voter to challenge validity of proposed initiative petition did not sufficiently inhibit First Amendment activity such as to be unconstitutionally short, particularly in light of numerous alternative opportunities for expres-

sion of opposition to challenge the petition. D.C. Code § 1-1116(o); U.S. Const. Amend. 1. *Citizens against Legalized Gambling v. District of Columbia Board of Elections & Ethics*, 501 F. Supp. 786, 1980 U.S. Dist. LEXIS 16277 (1980).

Human Rights Act safeguards imposed by District Council on Board of Elections and Ethics, which required Board to refuse to accept any proposed initiative that would authorize, or have the effect of authorizing, discrimination prohibited by the Human Rights Act, were not inconsistent with the intent of the Initiative, Referendum, and Recall Charter Amendment Act (CAA) that gave citizens the right of initiative; the CAA was ambiguous as to whether there were other limitations on the right to initiative outside of exception for laws appropriating funds, and the CAA gave Council the authority to adopt acts as were necessary to carry out the purpose of the CAA. *Jackson v. D.C. Bd. of Elections & Ethics*, 999 A.2d 89, 2010 D.C. App. LEXIS 400 (2010), writ of certiorari denied by 131 S. Ct. 1001, 178 L. Ed. 2d 827, 2011 U.S. LEXIS 730, 79 U.S.L.W. 3419 (U.S. 2011).

— Proper subjects, matters subject to initiative.

Nothing in the Home Rule Act prohibits the District of Columbia Board of Elections and Ethics from certifying as a “proper subject” an initiative that, if enacted, would conflict with federal law. *Marijuana Policy Project v. D.C. Bd. of Elections & Ethics*, 191 F.Supp.2d 196, 2002 U.S. Dist. LEXIS 5242 (2002), reversed by 304 F.3d 82, 353 U.S. App. D.C. 267, 2002 U.S. App. LEXIS 20863 (2002), vacated in part by, reversed by 46 Fed. Appx. 633, 2002 U.S. App. LEXIS 27298 (D.C. Cir. 2002).

Proposed District of Columbia initiative, substantive effect of which would be to amend general capital construction statute removing authorization for convention center and also to repeal law providing for its operation did not address merely administrative concerns or impermissibly interfere with execution of existing law and thus was “legislative” in both its substantive and final aspects and did not violate rule that initiative cannot extend to administrative matters. (*Per Ferren, J.*, with two Judges concurring and two Judges concurring in result.) D.C. Code 1973, § 9-220(a); D.C. Code 1980 Supp. § 1-181(b). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

— Unemployment compensation, matters subject to initiative.

Proposed unemployment compensation initiative was not a proper subject of the initiative process pursuant to Initiative Procedures Act, since it was precluded by Charter Amendments

Act’s exception governing “laws appropriating funds.” D.C. Code 1981, §§ 1-281(a), 1-1301, 1-1302(10), 1-1320(b), 1-1326. *District of Columbia Bd. of Elections & Ethics v. Jones*, 481 A.2d 456, 1984 D.C. App. LEXIS 472 (1984).

Proposed initiative regarding unemployment compensation would force District of Columbia government into making interest payments for borrowed funds and to seek additional appropriations for employer contributions to the unemployment compensation fund, and would thereby constitute an affirmative effort to appropriate funds—an action specifically excluded from right of initiative by Charter Amendments Act’s “laws appropriating funds” exception. D.C. Code 1981, §§ 1-281(a), 1-1301, 1-1320(b), 1-1326. *District of Columbia Bd. of Elections & Ethics v. Jones*, 481 A.2d 456, 1984 D.C. App. LEXIS 472 (1984).

Petitions.

Rule of Board of Elections and Ethics of District of Columbia permitting the Board to consider as valid a signature on an initiative petition that has been solicited by a circulator who has not complied with provisions of District of Columbia statute requiring such circulator to be a registered voter was valid and noncompliance by the circulator need not, as a matter of law, have invalidated any signature so long as criminal sanctions were pursued. D.C. Code §§ 1-1114(b)(3), 1-1116(h). *Citizens against Legalized Gambling v. District of Columbia Board of Elections & Ethics*, 501 F. Supp. 786, 1980 U.S. Dist. LEXIS 16277 (1980).

Board of Elections and Ethics was entitled to strike all of the petition sheets generated by citizens’ group in support of proposed ballot initiative due to irregularities in the petition circulation process, where circulators of petitions testified as to having falsely signed circulator affidavits. *Citizens Comm. for the D.C. Video Lottery Terminal Initiative v. D.C. Bd. of Elections & Ethics*, 860 A.2d 813, 2004 D.C. App. LEXIS 457 (2004).

Board of Elections and Ethics’ interpretation of one of its own regulations providing that a defect in a circulator’s status does not invalidate the signatures he has gathered on an initiative petition, which restricted applicability of the rule to cover only those circumstances in which the circulator failed to be registered due to his or her inadvertence to register or a candidate proponent reasonably believes the circulator is a qualified elector and the number of signatures involved was de minimis, was plainly erroneous and restricted rather than implemented the basic purpose of the Initiative Act. D.C. Code 1981, § 1-1302(10). *Dankman v. District of Columbia Bd. of Elections & Ethics*, 443 A.2d 507, 1981 D.C. App. LEXIS 418 (1981).

Review.

Superior court has power to conduct its own

independent, de novo examination of proposed initiative once it has acquired jurisdiction and is not limited to mere review of factors considered by Board of Elections and Ethics, although court may, and in most cases should, take those factors into account in making decision. D.C. Code 1981, § 1-1320(b). *Hessey v. Burden*, 615 A.2d 562, 1992 D.C. App. LEXIS 280 (1992), remanded by, appeal dismissed sub nomine *Price v. District of Columbia Bd. of Elections & Ethics*, 645 A.2d 594, 1994 D.C. App. LEXIS 121 (D.C. 1994).

Court's discretion to rule or not to rule on constitutional objections to proposed initiative is not tied exclusively to proponent's petition for mandamus; court may exercise its discretion to evaluate constitutional claims before election when court is acting within general equity jurisdiction. D.C. Code 1981, § 1-1320(b)(3). *Hessey v. Burden*, 615 A.2d 562, 1992 D.C. App. LEXIS 280 (1992), remanded by, appeal dismissed sub nomine *Price v. District of Columbia Bd. of Elections & Ethics*, 645 A.2d 594, 1994 D.C. App. LEXIS 121 (D.C. 1994).

Intervenors, who successfully challenged validity of initiative petition for Board of Elections and Ethics, had standing to intervene in proponent's petition for review and advance the arguments in court that they had lost before the Board. Court of Appeals, Rule 15(g); D.C. Code 1978 Supp. § 1-1108(p)(2). *Dankman v.*

District of Columbia Bd. of Elections & Ethics, 443 A.2d 507, 1981 D.C. App. LEXIS 418 (1981).

Parties who successfully challenged validity of initiative petition before Board of Elections and Ethics did not prejudice their review rights by docketing separately the arguments they lost before the Board rather than presenting all their arguments in proponent's petition for review in which they duly intervened. *Dankman v. District of Columbia Bd. of Elections & Ethics*, 443 A.2d 507, 1981 D.C. App. LEXIS 418 (1981).

Because an initiative may establish a law, it must include a bill, and thus neither District of Columbia Board of Elections and Ethics nor court truly can determine whether initiative conforms to limitations on initiative right unless it scrutinizes very bill that would become law. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181 to 1-187, 1-181(a). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Superior court had equitable authority to render declaratory relief in case between Board of Elections and District of Columbia on issue of whether initiative measure violated "laws appropriating funds" exception to right of initiative. *D.C. v. D.C. Board of Elections*, 131 WLR 885 (Super. Ct. 2003).

§ 1-1001.17. Recall process.

(a) The provisions of this section shall govern the recall of all elected officers of the District of Columbia except the Delegate to the Congress from the District of Columbia.

(b)(1) Any registered qualified elector or electors desiring to initiate the recall of an elected officer shall file a notice of intention to recall that officer with the Board, which contains the following information:

(A) The name and title of the elected officer sought to be recalled;

(B) A statement not to exceed 200 words in length, giving the reasons for the proposed recall;

(C) The name and address of the proposer of the recall; and

(D) An affidavit that each proposer is:

(i) A registered qualified elector in the election ward of the elected officer whose recall is sought, if that officer was elected to represent a ward;

(ii) A registered qualified elector in the District of Columbia, if the officer whose recall is sought was elected at-large; or

(iii) A registered qualified elector in the single-member district of an Advisory Neighborhood Commissioner whose recall is sought.

(2) A separate notice of intention shall be filed for each officer sought to be recalled.

(c)(1) No recall proceedings shall be initiated for an elected officer during the 1st 365 days nor during the last 365 days of his term of office.

(2) The recall process for an elected officer may not be initiated within 365 days after a recall election has been determined in his or her favor.

(3) In the case of an Advisory Neighborhood Commissioner, no recall proceedings shall be initiated during the first 6 months or the last 6 months of the Commissioner's term of office, nor within 6 months after a recall election has been decided in favor of the Commissioner.

(d)(1) The Board shall serve, in person or by certified mail, the notice of intention to recall to the elected officer sought to be recalled within 5 calendar days.

(2) The elected officer sought to be recalled may file with the Board, within 10 calendar days after the filing of the notice of intention to recall, a response of not more than 200 words, to the statement of the proposer of recall. If an answer is filed, the Board shall serve immediately a copy of that response to the proposer named in the notice of intention to recall.

(3) The statement contained in the notice of intention to recall and the elected officer's response are intended solely for the information of the voters. No insufficiency in form or substance of such statement shall affect the validity of the election proceedings.

(e) Upon filing with the Board the notice of intention of recall and the elected officer's response, the Board shall prepare and provide to the proponent an original petition form which the proposer shall formally adopt as his or her own form. The proponent shall print from the original blank petition sheets on white paper of good writing quality of the same size as the original. Each recall petition sheet shall be double sided and consist of numbered lines for 20 names and signatures with residence address (street numbers), and, where applicable, the ward numbers, and shall have printed on it the following:

(1) A warning statement that declares that only duly registered electors of the District of Columbia may sign the petition;

(2) The name of the elected officer sought to be recalled and the office which he or she holds;

(3) A statement that requests that the Board hold a recall election in a manner prescribed in §§ 1-204.111 to 1-204.115;

(4) The name and address of the proposer or proposers of the recall; and

(5) The statement of grounds for the recall and the response of the officer sought to be recalled, if any. If the officer sought to be recalled has not responded, the petition shall so state.

(f) Each petition sheet or sheets for recall shall have attached to it, at the time of submission to the Board, a statement made under penalties of perjury, in a form determined by the Board signed by the circulator of that petition which contains the following:

(1) The printed name of the circulator;

(2) The residence address of the circulator giving the street and number;

(3) That the circulator of the petition form was in the presence of each person when the appended signature was written;

(4) That according to the best information available to the circulator, each signature is the genuine signature of the person whose name it purports to be;

(5) That the circulator of the recall petition is a registered elector of the electoral jurisdiction of the officer sought to be recalled; and

(6) The dates between which all the signatures to the petition were obtained.

(g) The proposer of a recall shall have 180 days or, in the case of a proposed recall of an Advisory Neighborhood Commissioner, 60 days, beginning on the date when the proponent of the recall formally adopts the original petition form as his or her own form pursuant to subsection (e) of this section, to circulate the recall petition and file the petition with the Board.

(h)(1) A recall petition for an elected officer from a ward shall include the valid signatures of 10 percent of the registered qualified electors of the ward from which the officer was elected. The 10 percent shall be computed from the total number of the qualified registered electors from such ward according to the latest official count of the registered qualified electors made by the Board 30 days prior to the date of initial submission to the Board of the notice of intention to recall.

(2) A recall petition for an at-large elected official shall contain the signatures of registered qualified electors in number equal to 10 percent of the registered qualified electors in the District of Columbia: Provided, that the total signatures submitted include 10 percent of the registered electors in each of 5 or more of the 8 wards. The 10 percent shall be computed from the total number of registered qualified electors from the District of Columbia according to the same procedures established in paragraph (1) of this subsection.

(3) A recall petition for an elected officer from a single-member district shall include the valid signatures of 10% of the registered qualified electors of the single-member district from which the officer was elected, except when the elected officer has missed all regularly scheduled meetings of the Advisory Neighborhood Commission of which the single-member district is a part for at least a three-month period, in which case the recall petition must only include the valid signatures of 5% of the registered qualified electors of the single-member district from which the officer was elected. The 5% or 10% shall be computed from the total number of registered qualified electors from the single-member district in accordance with the same procedures established in paragraph (1) of this subsection.

(i) Upon the submission of a recall petition by the proposer to the Board, the Board shall refuse to accept the petition upon any of the following grounds:

(1) Except in the case of a recall petition for an Advisory Neighborhood Commissioner, the financial disclosure statement of the proposer has not been filed pursuant to §§ 1-1163.07 and 1-1163.09;

(2) The petition is not the proper form established in subsection (e) of this section;

(3) The restrictions for initiating the recall process established in subsection (c) of this section were not observed;

(4) The time limitation established in subsection (g) of this section within which the recall petition may be circulated and submitted to the Board has expired;

(5) The petition clearly bears on its face an insufficient number of signatures to qualify for the ballot; or

(6) The petition was circulated by persons who, if the officer sought to be recalled was elected at-large, were not qualified registered electors of the

District of Columbia or if the officer sought to be recalled was elected from a ward, qualified registered electors of that ward, or if the officer sought to be recalled was elected from an Advisory Neighborhood Commission SMD, qualified registered electors of that SMD.

(j)(1) If the Board refuses to accept the recall petition when submitted to it, the proposer submitting such petition to the Board may appeal, within 10 days after the Board's refusal, to the Superior Court of the District of Columbia for a writ in the nature of mandamus to compel the Board to accept such recall petition. The Superior Court of the District of Columbia shall expedite the consideration of the matter. If the Superior Court of the District of Columbia determines that the petition is legal in form and apparently meets the requirements established under this section, it shall issue an order requiring the Board to accept the petition as of the date of submission.

(2) Should the Superior Court of the District of Columbia hold in favor of the proposer, it may award court costs and reasonable attorney's fees to the proposer.

(k)(1) After the acceptance of a recall petition, the Board shall certify, within 30 calendar days after such petition has been filed, whether or not the number of valid signatures on the recall petition meets the qualifying percentage and ward distribution requirements established in subsection (h) of this section and whether or not the necessary number of signatures of registered qualified electors of the District of Columbia, properly distributed by wards, appears on the petition. This certification may be made by a bona fide random and statistical sampling method. In a case in which an officer elected from a ward is sought to be recalled, if a person who signs a recall petition for that elected officer is found not to be a registered qualified elector in the ward indicated on the petition, that name and signature shall not be counted toward determining whether or not the recall measure qualifies. In a case in which an officer elected at-large is sought to be recalled, if a person who signs a recall petition for that elected officer is found to be a registered qualified elector in a ward other than what was indicated on the petition sheet, such person shall be counted from the correct ward in determining whether or not a recall measure for an at-large elected officer qualified. In a case in which an Advisory Neighborhood Commissioner is sought to be recalled, if a person who signs a petition to recall that Advisory Neighborhood Commissioner is found not to be a registered qualified elector in the single-member district indicated on the petition, the person's name and signature shall not be counted toward determining whether or not the recall measure qualifies. If the Board finds that the same person has signed a petition for the same recall measure more than once, it shall count only 1 signature of such person. Two persons representing the petitioner(s) seeking the recall and 2 persons representing the elected officer sought to be recalled may be present to observe during the counting and validating procedure.

(2) The Board shall post, within 3 calendar days after the acceptance of a recall petition, whether in the normal course or at the direction of a court, by making available for public inspection in the office of the Board, the petition for the recall measure or facsimile. Any registered qualified elector, during a 10-day period (including Saturdays, Sundays, and holidays, except that with

respect to a petition to recall a member of an Advisory Neighborhood Commission SMD, the 10-day period shall not include Saturdays, Sundays, and holidays), beginning on the day the recall petition was posted by the Board, may challenge the validity of such petition by a written statement duly signed by the challenger and filed with the Board, specifying concisely the alleged defects in the petition. The provisions of § 1-1001.08(o)(2) shall be applicable to a challenge and the Board may establish any necessary rules and regulations consistent that concerns the process of the challenge.

(3) For the purpose of verifying a signature on any petition filed pursuant to this section, the Board shall first determine that the address on the petition is the same as the residence shown on the signer's voter registration record. If the address is different, the signature shall not be counted as valid unless the Board's records show that the person was registered to vote from the address listed on the petition at the time the person signed the petition.

(1) After determining that the number and validity of signatures in the recall petition meet the requirements established in this section, the Board shall certify the sufficiency of such recall petition and shall fix the date of a special election to determine whether the elected officer who is the subject of the recall shall be removed from his or her office. The Board shall conduct an election for this purpose within 114 days after the date the petition to recall has been certified as to its sufficiency. If a previously scheduled general, primary, or special election will occur between 54 and 114 days after the date the petition to recall has been certified as to its sufficiency, the Board may present the recall measure at that election. In the case of a proposed recall of an officer elected to represent a particular ward, the recall election shall be conducted only in that ward. In the case of a proposed recall of an Advisory Neighborhood Commissioner, the recall election shall be conducted in one of the following manners unless conducted in accordance with a previously scheduled general, primary, or special election pursuant to this subsection:

(1)(A) In the single-member district represented by the Advisory Neighborhood Commissioner at the voting precinct containing the majority of the registered qualified electors; or

(B) If the voting precinct is unavailable, at an appropriate alternative site within the single-member district;

(2) By postal ballot by mailing by 1st class mail no later than 7 days prior to the date of the election an official ballot issued by the Board. The ballots shall be mailed to each qualified registered elector in the single-member district at the address at which the elector is registered, except for those persons who have made arrangements with the Board for absentee voting pursuant to § 1-1001.09(b)(2). The Board shall, pursuant to § 1-1001.05(a)(14), issue rules to implement the provisions of this paragraph. The ballots shall be printed with prepaid 1st class postage and shall be postmarked no later than midnight of the day of the election.

(3) A special election called to consider the recall of an Advisory Neighborhood Commissioner shall not be considered an election for the purposes of § 1-1001.16(p).

(m) The Board shall place the recall measure on the ballot in substantially the following form:

FOR the recall of (insert the name of the elected officer and the office held)
 AGAINST the recall of (insert the name of the elected officer and the office held)

(n) Based on the results of the special election held to decide the outcome of the recall measure, the elected officer sought to be recalled shall be removed from that office: Provided, that a majority of the qualified electors voting in the recall election vote to remove him or her. The vacancy, as created by the removal, shall be filled in the same manner as other vacancies, as provided in §§ 1-204.01(b)(3) and (d), 1-204.21(c)(2), 1-309.06(d), and 1-1001.10.

(Aug. 12, 1955, 69 Stat. 704, ch. 862, § 17, as added June 7, 1979, D.C. Law 3-1, § 2(d), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 2(l), (n)-(q), (s), 29 DCR 458; Mar. 16, 1988, D.C. Law 7-92, § 3(o), 35 DCR 716; Mar. 6, 1991, D.C. Law 8-203, § 2, 37 DCR 8420; Mar. 11, 1992, D.C. Law 9-75, § 2(f), 39 DCR 310; Sept. 22, 1994, D.C. Law 10-173, § 2(h), (i), 41 DCR 5154; Apr. 18, 1996, D.C. Law 11-110, § 5(b), 43 DCR 530; Apr. 9, 1997, D.C. Law 11-255, § 6(b), 44 DCR 1271; June 27, 2000, D.C. Law 13-135, § 6, 47 DCR 2741; Feb. 4, 2010, D.C. Law 18-103, § 2(j), 56 DCR 9169; Apr. 27, 2012, D.C. Law 19-124, § 501(g)(7), 59 DCR 1862.)

Cross references. — Constitutional convention, assembly, approval or rejection of proposed constitution, election and recall of representatives elected to Congress, see § 1-123.

Political committees, statements of organization, required disclosures, see § 1-1102.04.

Section references. — This section is referred to in §§ 1-1001.07, 1-1001.09, 1-1001.11, 1-1001.14, and 1-1021.04.

Prior Codifications. — 1981 Ed., § 1-1321. 1973 Ed., § 1-1117.

Effect of amendments. — D.C. Law 13-135 rewrote par. (3) of subsec. (h), which formerly read:

“A recall petition for an elected officer from a single-member district shall include the valid signatures of 10% of the registered qualified electors of the single-member district from which the officer was elected. The 10% shall be computed from the total number of registered qualified electors from the single-member district in accordance with the same procedures established in paragraph (1) of this subsection.”

D.C. Law 18-103 rewrote subsec. (g), which had read as follows: “(g) The proposer of a recall shall have 180 days, or, in the case of a proposed recall of an Advisory Neighborhood Commissioner, 60 days, beginning on the date when the elected officer has filed with the Board his or her response to the proposer’s notice of intention to recall pursuant to subsection (d)(2) of this section, to circulate the recall petition and file such petition with the Board. If the elected officer sought to be recalled files no response to the notice of intention to recall, the

time limitation shall begin on the deadline date for a response established in subsection (d)(2) of this section.”

D.C. Law 19-124, in subsec. (i)(1), substituted “§§ 1-1163.07 and 1-1163.09” for “§§ 1-1102.04 and 1-1102.06”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(j) of Omnibus Election Reform Emergency Amendment Act of 2009 (D.C. Act 18-236, November 30, 2009, 56 DCR 9154).

For temporary (90 day) amendment of section, see § 401(g)(7) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 3-1. — For legislative history of D.C. Law 3-1, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 7-92. — For legislative history of D.C. Law 7-92, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 8-203. — Law 8-203 was introduced in Council and assigned Bill No. 8-626, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 20, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-277 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-75. — For legislative history of D.C. Law 9-75, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 10-173. — For legislative history of D.C. Law 10-173, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 11-110. — For legislative history of D.C. Law 11-110, see Historical and Statutory Notes following § 1-1001.07.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 1-1001.09.

Legislative history of Law 13-135. — Law

13-135, the “Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-468, which was referred to the Committee on Local and Regional Affairs. The Bill was adopted on first and second readings on February 1, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 28, 2000, it was assigned Act No. 13-313 and transmitted to both Houses of Congress for its review. D.C. Law 13-135 became effective on June 27, 2000.

Legislative history of Law 18-103. — For Law 18-103, see notes following § 1-1001.02.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Subchapter II. Election Wards.

§ 1-1011.01. Election wards.

(a)(1) Not later than 10 days after receiving the official report of the federal decennial census (“census report”) for the District of Columbia (“District”) by the United States Bureau of the Census, the Mayor shall transmit the census report to the Council, including all information pertaining to the official total population of the District and the official population size of each of the census tracts, census blocks, and election wards in the District.

(2) The Mayor and the District of Columbia Board of Elections and Ethics (“Board”) shall provide the Council with technical and analytical services necessary for decennial redistricting, including but not limited to, statistical and demographic analysis of official census data and production of computerized election district maps.

(3) The Mayor and the Board shall make available to the public, at cost, copies of the census data base and any maps to be used for redistricting in hard copy or machine readable form.

(b) The Council shall, by act after public hearing, make any adjustment in the boundaries of election wards that is necessary as a result of population shifts and changes, not later than 90 days after the Council’s receipt of the census report, or not later than July 14th of the year in which the census report is received, whichever is later.

(c) The Council shall divide the District into 8 compact and contiguous election wards, each of which shall be approximately equal in population size.

(d) The total District population and the population of the District’s defined sub-units, as determined by the census report, or any official adjustment of the census report, shall be the exclusive permissible population data for apportionment of election wards.

(e) The boundaries of each of the 8 election wards shall conform to the greatest extent possible with the boundaries of the census tracts that are established by the United States Bureau of the Census.

(f) No redistricting plan or proposed amendment to a redistricting plan shall result in district populations with a deviation range more than 10% or a

relative deviation greater than plus-or-minus 5%, unless the deviation results from the limitations of census geography or from the promotion of a rational public policy, including but not limited to respect for the political geography of the District, the natural geography of the District, neighborhood cohesiveness, or the development of compact and contiguous districts.

(g) No redistricting plan or proposed amendment to a redistricting plan shall be considered if the plan or amendment has the purpose and effect of diluting the voting strength of minority citizens.

(h) Any adjustment made less than 180 days prior to a regularly scheduled election shall not be effective for that election, or, if that election is a primary election, for the general election following the primary election.

(Dec. 16, 1975, D.C. Law 1-38, § 2, 22 DCR 3433; June 23, 1981, D.C. Law 4-14, § 3, 28 DCR 2132; Mar. 16, 1982, D.C. Law 4-87, § 5(b), 29 DCR 433; Mar. 16, 1982, D.C. Law 4-88, § 2(q), 29 DCR 458; Mar. 10, 1983, D.C. Law 4-199, § 6, 30 DCR 119; June 22, 1983, D.C. Law 5-13, § 4, 30 DCR 2433; Mar. 8, 1991, D.C. Law 8-240, § 2, 38 DCR 337.)

Cross references. — Youth affairs, neighborhood planning councils, see § 2-1503.01.

Section references. — This section is referred to in §§ 1-636.02, 1-1041.02, and 38-2651.

Prior Codifications. — 1981 Ed., § 1-1308. 1973 Ed., § 1-1105b.

Legislative history of Law 1-38. — For legislative history of D.C. Law 1-38, see Historical and Statutory Notes following § 1-1001.05.

Legislative history of Law 4-14. — Law 4-14 was introduced in Council and assigned Bill No. 4-97, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 7, 1981 and April 28, 1981, respectively. Signed by the Mayor on May 1, 1981, it was assigned Act No. 4-28 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-87. — For legislative history of D.C. Law 4-87, see Historical and Statutory Notes following § 1-1041.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

Legislative history of Law 4-199. — Law 4-199 was introduced in Council and assigned Bill No. 4-427, which was referred to the Committee on Human Services. The Bill was ad-

opted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-283 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-13. — Law 5-13 was introduced in Council and assigned Bill No. 5-158, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 12, 1983 and April 26, 1983, respectively. Signed by the Mayor on May 4, 1983, it was assigned Act No. 5-27 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-240. — Law 8-240 was introduced in Council and assigned Bill No. 8-560, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-323 and transmitted to both Houses of Congress for its review.

Editor's notes. — District boundaries established: Pursuant to § 1-309.03 and this section, § 2 of D.C. Law 5-13 established the boundaries of both Advisory Neighborhood Commission areas and single-member districts within Advisory Neighborhood Commission areas.

CASE NOTES

ANALYSIS

Census tracts.
Collateral estoppel.
Compact and contiguous wards.
In general.
Voting strength of minority citizens.

Census tracts.

Splitting two census tracts between election wards upon redistricting was not shown to violate statutory requirement to conform with the boundaries of the census tracts to the greatest extent possible; nothing indicated that legislature did not conform to the tracts to the

greatest extent possible. *Kingman Park Civic Ass'n v. Williams*, 924 A.2d 979, 2007 D.C. App. LEXIS 243 (2007).

Collateral estoppel.

Federal court decision that District of Columbia redistricting plan did not have discriminatory effect in violation of Voting Rights Act collaterally estopped relitigation of vote dilution claim by same plaintiffs against same defendants under District of Columbia Election Act. *Kingman Park Civic Ass'n v. Williams*, 924 A.2d 979, 2007 D.C. App. LEXIS 243 (2007).

Compact and contiguous wards.

Election wards remained compact and contiguous after redistricting, even though they traversed park and river; a resident could reasonably access all portions of the election districts without leaving them, neither the park nor the river posed an impenetrable barrier that could not be readily traversed in a matter of minutes by the roads through the park and across the river, and each ward covered a defined regular area and was not disjointed or divided by other pieces of land. *Kingman Park Civic Ass'n v. Williams*, 924 A.2d 979, 2007 D.C. App. LEXIS 243 (2007).

In general.

Conformity to census tracts is only one of several factors the District of Columbia Council

must take into consideration when redistricting electoral wards, and courts defer to its legislative determination in weighing these concerns. *Kingman Park Civic Ass'n v. Williams*, 924 A.2d 979, 2007 D.C. App. LEXIS 243 (2007).

Election Act does not mandate that respect for natural boundaries be a prevailing concern in redistricting, but makes it a factor that can justify a greater deviation from equal population of wards. *Kingman Park Civic Ass'n v. Williams*, 924 A.2d 979, 2007 D.C. App. LEXIS 243 (2007).

Voting strength of minority citizens.

Splitting predominantly African-American neighborhoods between wards was not shown to violate Election Act prohibition against redistricting with purpose and effect of diluting the voting strength of minority citizens; complaint failed to allege that geographically compact minority was majority in district, was politically cohesive, and had a preferred candidate who would be defeated by a white majority, and the redistricting plan represented a legislative compromise, well-documented in the legislative history, from which no discriminatory purpose could be inferred. *Kingman Park Civic Ass'n v. Williams*, 924 A.2d 979, 2007 D.C. App. LEXIS 243 (2007).

Subchapter III. Provisions Relating to 1978 Amendments.

§ 1-1021.01. Timeliness of action.

For purposes of this or any other act administered by the Board of Elections and Ethics, if the final date for any action falls on a Saturday, Sunday, or legal holiday, such action shall be considered timely if taken on the next regular business day immediately thereafter.

(June 7, 1979, D.C. Law 3-1, § 6, 25 DCR 9454.)

Prior Codifications. — 1981 Ed., § 1-1322. 1973 Ed., § 1-1118.

Legislative history of Law 3-1. — For legislative history of D.C. Law 3-1, see Historical and Statutory Notes following § 1-1001.02.

References in text. — “This _____ act,” referenced in this section is the Initiative,

Referendum and Recall Procedures Act of 1979, effective June 7, 1979, D.C. Law 3-1.

Editor's notes. — Acts administered by Board: Chapter 13 (except §§ 1-207.52 and 1-1011.01) and Chapter 11 of Title 1 are administered by the Board of Elections and Ethics.

§ 1-1021.02. Issuance of rules and regulations.

The Board of Elections and Ethics shall issue rules and regulations to effect the provisions of this act, in accordance with the District of Columbia Administrative Procedure Act (§ 2-501 et seq.).

(June 7, 1979, D.C. Law 3-1, § 8, 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 7, 29 DCR 458.)

Prior Codifications. — 1981 Ed., § 1-1324. 1973 Ed., § 1-1119.1.

Legislative history of Law 3-1. — For legislative history of D.C. Law 3-1, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 4-88. — For

legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

References in text. — “This act,” referenced in this section is the Initiative, Referendum and Recall Procedures Act of 1979, effective June 7, 1979, D.C. Law 3-1.

§ 1-1021.03. Applicability of § 1-1001.16 to initiative petitions circulated on or after October 1, 1978, and before June 7, 1979.

With respect to any initiative petition circulated on or after October 1, 1978, and before June 7, 1979, that is presented to or offered for filing to the Board of Elections and Ethics, § 1-1001.16 shall apply: Except, that:

(1) The provisions of subsections (h)(1), (j)(1), (j)(3), (k)(1)(B) and (k)(1)(C) of § 1-1001.16 shall not be applied in the case of such petition;

(2) Subsection (b) of § 1-1001.16 shall not apply to the extent that it would require the assignment and use of a serial number prior to the circulation and filing of such petition;

(3) Subsections (c) through (f) of § 1-1001.16 shall not apply to the extent that they would require the approval of a summary statement, short title, and legislative form for an initiative measure prior to the circulation and filing of such petitions; and

(4) Subsection (g) of § 1-1001.16 shall not apply to such petition: Provided, however, that each sheet of the petition shall include a statement declaring that each person signing must be or is a registered voter in the District of Columbia.

(June 7, 1979, D.C. Law 3-1, § 9, 25 DCR 9454.)

Prior Codifications. — 1981 Ed., § 1-1325. 1973 Ed., § 1-1119.2.

Legislative history of Law 3-1. — For

legislative history of D.C. Law 3-1, see Historical and Statutory Notes following § 1-1001.02.

§ 1-1021.04. Effective date.

This act shall take effect at the end of the 30-day period provided for the Congressional review of acts of the Council of the District of Columbia in § 1-206.02(c)(1): Provided, however, that no initiative, referendum or recall measure may be initiated as provided in §§ 1-1001.16 and 1-1001.17 until on or after October 1, 1978.

(June 7, 1979, D.C. Law 3-1, § 10, 25 DCR 9454.)

Prior Codifications. — 1981 Ed., § 1-1326. 1973 Ed., § 1-1119.3.

Legislative history of Law 3-1. — For legislative history of D.C. Law 3-1, see Historical and Statutory Notes following § 1-1001.02.

References in text. — “This act,” referenced in this section is the Initiative, Referendum and Recall Procedures Act of 1979, effective June 7, 1979, D.C. Law 3-1.

*Subchapter IV. Multilingual Election Materials.***§ 1-1031.01. “Non-English speaking person” defined.**

As used in this section, the term “non-English speaking person” shall mean a person whose native speaking language is a language other than English, and who continues to use his or her native language as his or her primary means of oral and written communication.

(Sept. 2, 1976, D.C. Law 1-79, title IV, §§ 402, 403, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Mar. 16, 1982, D.C. Law 4-88, §§ 2(q), 6, 29 DCR 458.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-1309(a).

1973 Ed., § 1-1105c.

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

§ 1-1031.02. Election materials to be supplied in Non-English language and in English.

(a) In election wards in the District of Columbia in which non-English speaking persons who speak the same language constitute 5 percent or more of the eligible voting population, as determined by the Statistical Office of the District of Columbia government, the Board of Elections and Ethics (hereinafter in this section referred to as the “Board”) shall cause all election materials, including, but not limited to, ballots, voting instructions, and voter pamphlets, to be supplied in both the native language of such non-English speaking eligible voters and English.

(b) The Board may by regulation adopt lesser percentages of non-English speaking persons in a particular ward or precinct who would be sufficient to obtain election materials in a language other than English, and may by regulation, establish procedures to allow non-English speaking persons to participate in the electoral process where such non-English speaking persons do not constitute 5 percent or more of the eligible voting population in 1 ward or precinct.

(Sept. 2, 1976, D.C. Law 1-79, title IV, §§ 402, 403, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Mar. 16, 1982, D.C. Law 4-88, §§ 2(q), 6, 29 DCR 458.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-1309(b), (c).

1973 Ed., § 1-1105c.

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1001.02.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

Subchapter V. Election Area Boundaries.

§ 1-1041.01. Establishment of ward task forces on Advisory Neighborhood Commissions.

(a) Each member of the Council of the District of Columbia ("Council") elected from a ward shall appoint a broadly-based ward task force on Advisory Neighborhood Commissions ("ward task force") for his or her ward.

(b) In appointing the members of a ward task force, each Councilmember shall give full consideration to assuring fair representation for all racial and ethnic minorities, women, and geographical areas in his or her ward.

(c) Each member of a ward task force shall be a registered voter and resident of the ward for which his or her ward task force is appointed.

(d) Each member of the Council elected at-large and the Chairman of the Council may appoint a person to each ward task force.

(e) Ward task force members shall serve until the ward task force files its final report with the Council unless the Council, by resolution, extends the term of the ward task force.

(f) Each ward task force member shall serve without compensation.

(Mar. 16, 1982, D.C. Law 4-87, § 2, 29 DCR 433; Mar. 10, 1983, D.C. Law 4-199, § 5, 30 DCR 119.)

Cross references. — Single-member districts, establishment and boundaries, subsequent adjustment of boundaries, see § 1-309.03.

Prior Codifications. — 1981 Ed., § 1-1331.

Legislative history of Law 4-87. — Law 4-87, the "Redistricting Procedure Act of 1981," was introduced in Council and assigned Bill No. 4-181, which was referred to the Committee of the Whole. The Bill was adopted on first and

second readings on November 24, 1981 and December 8, 1981, respectively. Approved without the signature of the Mayor on January 19, 1981, it was assigned Act No. 4-141 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-199. — For legislative history of D.C. Law 4-199, see Historical and Statutory Notes following § 1-1011.01.

§ 1-1041.02. Report of ward task forces.

(a)(1) Each ward task force shall submit a report to the Council not later than 90 days after approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto) of legislation that reapportions the boundaries of the election wards pursuant to § 1-1011.01.

(2) The Mayor and the District of Columbia Board of Elections and Ethics ("Board") shall provide each ward task force with technical and analytical services necessary for decennial redistricting, including, but not limited to, statistical and demographic analysis of official census data and production of computerized election district maps.

(3) The Mayor and the Board shall make available to the public, at cost, copies of the census data base and any maps to be used for redistricting in hard copy or machine readable form.

(b) The report submitted by a ward task force shall contain:

(1) Alternative recommendations for the adjustment of the boundaries of

Advisory Neighborhood Commission area and single-member districts for that ward; and

(2) Other recommendations with respect to the operation of advisory neighborhood commissions.

(c) In developing its report, each ward task force shall comply with the requirements of this section and the requirements of § 1-309.03.

(d) The total District population and the population of defined sub-units of the District population as determined by the federal decennial census, or any official adjustment to the federal decennial census, shall be the exclusive permissible population data for apportionment of single-member districts.

(e) No redistricting plan or proposed amendment to a redistricting plan shall result in district populations with a deviation range greater than 10% or a relative deviation greater than plus-or-minus 5%, unless the deviation results from the limitations of census geography or from the promotion of a rational public policy, including, but not limited to, respect for the political geography of the District, the natural geography of the District, neighborhood cohesiveness, or the development of compact and contiguous districts.

(f) No redistricting plan or proposed amendment to a redistricting plan shall be considered if the plan or amendment has the purpose and effect of diluting the voting strength of minority citizens.

(Mar. 16, 1982, D.C. Law 4-87, § 3, 29 DCR 433; Mar. 10, 1983, D.C. Law 4-199, § 5, 30 DCR 119; Mar. 8, 1991, D.C. Law 8-240, § 4, 38 DCR 337.)

Prior Codifications. — 1981 Ed., § 1-1332.

Legislative history of Law 4-87. — For legislative history of D.C. Law 4-87, see Historical and Statutory Notes following § 1-1041.01.

Legislative history of Law 4-199. — For legislative history of D.C. Law 4-199, see His-

torical and Statutory Notes following § 1-1101.01.

Legislative history of Law 8-240. — For legislative history of D.C. Law 8-240, see Historical and Statutory Notes following § 1-1101.01.

§ 1-1041.03. Adoption of election ward boundaries effective January 1, 2012.

(a) The Council adopts the following election ward boundaries to be effective January 1, 2012, and to be used in all elections held after February 1, 2012, in the District of Columbia:

WARD I

Starting at the intersection of a line projected from Rock Creek to Piney Branch Parkway N.W.; thence in an easterly direction along said Piney Branch Parkway, N.W., to Sixteenth Street, N.W.; thence south along said Sixteenth Street, N.W., to Spring Road, N.W.; thence in an easterly direction along said Spring Road, N.W., to New Hampshire Avenue, N.W.; thence in a northeasterly direction along said New Hampshire Avenue, N.W., to Rock Creek Church Road, N.W.; thence in an easterly direction along said Rock Creek Church Road, N.W., to Park Place, N.W.; thence south along said Park Place, N.W., to Michigan Avenue, N.W.; thence in an easterly direction along said Michigan Avenue, N.W., to First Street, N.W.; thence south along said First Street, N.W.,

to Bryant Street, N.W.; thence in a westerly direction along said Bryant Street, N.W., to Second Street, N.W.; thence south along said Second Street, N.W., to Rhode Island Avenue, N.W.; thence in a westerly direction along said Rhode Island Avenue, N.W., to Florida Avenue, N.W.; thence in a westerly direction along said Florida Avenue, N.W., to T Street, N.W.; thence in a westerly direction along said T Street, N.W., to Wiltberger Street, N.W.; thence in a southerly direction along said Wiltberger Street, N.W., to S Street, N.W.; thence west along said S Street, N.W., to Fourteenth Street, N.W.; thence north along said Fourteenth Street, N.W., to U Street, N.W.; thence west along said U Street, N.W., to Florida Avenue, N.W.; thence in a southwesterly direction along said Florida Avenue, N.W., to Connecticut Avenue, N.W.; thence in a northwesterly direction along said Connecticut Avenue, N.W., to the center line of Rock Creek; thence in a northeasterly direction along said Rock Creek to the intersection of a line projected from the end of Piney Branch Parkway; thence along said projected line to Piney Branch Parkway, N.W.

WARD II

Starting at the intersection of the center line of Connecticut Avenue, N.W., and the center line of Rock Creek; thence southeasterly along said Connecticut Avenue, N.W., to Florida Avenue, N.W.; thence in an easterly direction along said Florida Avenue, N.W., to U Street, N.W.; thence east along said U Street, N.W., to Fourteenth Street, N.W.; thence south along said Fourteenth Street, N.W., to S Street, N.W.; thence east along said S Street, N.W., to Eleventh Street, N.W.; thence south along said Eleventh Street, N.W., to P Street, N.W.; thence east along said P Street, N.W., to Ninth Street, N.W.; thence south along Ninth Street, N.W., to N Street, N.W.; thence east along N Street, N.W., to the alley running along the eastern side of the Washington Convention Center; thence south along said alley to M Street, N.W.; thence east along said M Street, N.W., to Seventh Street, N.W.; thence south along Seventh Street, N.W., to Massachusetts Avenue, N.W.; thence along said Massachusetts Avenue, N.W., to the eastern boundary of Interstate 395; thence south along the said eastern boundary of Interstate 395 to the point where it crosses beneath Constitution Avenue, N.W.; thence east along said Constitution Avenue, N.W., to its intersection with a line extending north from the center line of South Capitol Street through the center of the Capitol building; thence south along said line to Independence Avenue, S.W.; thence west along said Independence Avenue, S.W., to Fourteenth Street, S.W.; thence south along said Fourteenth Street, S.W., to a center line projection of the Washington Channel; thence in a southerly direction along the center line projection of Washington Channel to a center line projection of the Anacostia River; thence southwesterly along the center line of said Anacostia River and the projection of that center line to the Commonwealth of Virginia-District of Columbia boundary line at the Commonwealth of Virginia shore of the Potomac River; thence in a northwesterly direction along said Commonwealth of Virginia-District of Columbia boundary line to its intersection with a line extending the eastern boundary of Glover Archbold Park south to the Commonwealth of Virginia shore of the Potomac

River; thence in a northerly direction from said boundary line to the southern boundary of the eastern leg of Glover Archbold Park; thence in an easterly direction along the southern boundary of the eastern leg of Glover Archbold Park to Whitehaven Parkway, N.W.; thence east along Whitehaven Parkway, N.W., to Thirty-Fifth Street, N.W.; thence in a northerly direction along said Thirty-Fifth Street, N.W., to Wisconsin Avenue, N.W.; thence in a southeasterly direction along said Wisconsin Avenue, N.W., to Whitehaven Street, N.W.; thence in an easterly direction along said Whitehaven Street, N.W., to the northwest boundary of Dumbarton Oaks Park; thence in an easterly direction along said northwest boundary of Dumbarton Oaks Park to Whitehaven Street, N.W.; thence in an easterly direction along said Whitehaven Street, N.W., to Massachusetts Avenue, N.W.; thence in a southeasterly direction along said Massachusetts Avenue, N.W., to the center line of Rock Creek; thence in a northeasterly direction along said center line of Rock Creek to the point of beginning at its intersection with Connecticut Avenue, N.W.

WARD III

Starting at the intersection of the State of Maryland-District of Columbia boundary line and the center line of Broad Branch Road, N.W.; thence in a southerly direction along said Broad Branch Road to Twenty-Seventh Street, N.W.; thence in a northerly direction along said Twenty-Seventh Street, N.W., to Military Road, N.W.; thence in an easterly direction along said Military Road, N.W., to the center line of Rock Creek; thence in a southerly direction along Rock Creek to its intersection with the center line of Massachusetts Avenue, N.W.; thence in a northwesterly direction along said Massachusetts Avenue, N.W., to Whitehaven Street, N.W.; thence west along said Whitehaven Street, N.W., to the northwestern boundary of Dumbarton Oaks Park; thence in a westerly direction along said northwestern boundary of said Dumbarton Oaks Park to Whitehaven Street, N.W.; thence in a westerly direction along said Whitehaven Street, N.W., to Wisconsin Avenue, N.W.; thence in a northwesterly direction along said Wisconsin Avenue, N.W., to Thirty-Fifth Street, N.W.; thence south along said Thirty-Fifth Street, N.W., to Whitehaven Parkway, N.W.; thence west along said Whitehaven Parkway, N.W., to the southern boundary of the eastern leg of Glover Archbold Park; thence in a westerly direction along said southern boundary of the eastern leg of Glover Archbold Park to a point where it intersects with the eastern boundary of Glover Archbold Park; thence in a southerly direction along the eastern boundary of Glover Archbold Park, extending said boundary along a line south to the Commonwealth of Virginia shore of the Potomac River; thence in a northwesterly direction along said Commonwealth of Virginia-District of Columbia boundary line where it follows the Commonwealth of Virginia shore of the Potomac River to the western corner of the District of Columbia; thence in a northeasterly direction along the State of Maryland-District of Columbia boundary line to the point of beginning at its intersection with Broad Branch Road, N.W.

WARD IV

Starting at the intersection of the State of Maryland-District of Columbia boundary line and the center line of Broad Branch Road, N.W.; thence in a southerly direction along said Broad Branch Road to Twenty-Seventh Street, N.W.; thence in a northerly direction along said Twenty-Seventh Street, N.W., to Military Road, N.W.; thence in an easterly direction along said Military Road, N.W., to the center line of Rock Creek; thence along said Rock Creek to the intersection of a line projected from the end of Piney Branch Parkway; thence along said projected line to Piney Branch Parkway N.W.; thence in an easterly direction along said Piney Branch Parkway, N.W., to Sixteenth Street, N.W.; thence south along said Sixteenth Street, N.W., to Spring Road, N.W.; thence in an easterly direction along said Spring Road, N.W., to New Hampshire Avenue, N.W.; thence in a northeasterly direction along said New Hampshire Avenue, N.W., to Rock Creek Church Road, N.W.; thence in a northeasterly direction along said Rock Creek Church Road, N.W., to North Capitol Street, N.W.; thence in a northerly direction along said North Capitol Street to Riggs Road, N.E.; thence in a northeasterly direction along said Riggs Road, N.E., to South Dakota Avenue, N.E.; thence in a southeasterly direction along said South Dakota Avenue, N.E., to Kennedy Street, N.E.; thence in an easterly direction along said Kennedy Street, N.E., to the intersection of its center line with the State of Maryland-District of Columbia boundary line; thence in a northwesterly direction along said boundary line to the northern corner of the District of Columbia; thence in a southwesterly direction along said State of Maryland-District of Columbia boundary line to the point of beginning at its intersection with the center line of Broad Branch Road, N.W.

WARD V

Starting at the intersection of First Street, N.W., and Michigan Avenue, N.W.; thence south along said First Street, N.W., to Bryant Street, N.W.; thence in a westerly direction along said Bryant Street, N.W., to Second Street, N.W.; thence south on said Second Street, N.W., to Rhode Island Avenue, N.W.; thence in a westerly direction along said Rhode Island Avenue, N.W., to Florida Avenue, N.W.; thence in a northwesterly direction along said Florida Avenue, N.W., to New Jersey Avenue, N.W.; thence in a southerly direction along said New Jersey Avenue, N.W., to New York Avenue, N.W.; thence in an easterly direction along said New York Avenue, N.W., to New York Avenue, N.E., to Florida Avenue, N.E.; thence in an easterly direction along said Florida Avenue, N.E., to Benning Road, N.E.; thence in an easterly direction along said Benning Road, N.E., to the center line of the Anacostia River; thence in a northerly direction along the Anacostia River to the intersection of its center line with the State of Maryland-District of Columbia boundary line; thence in a northwesterly direction along said boundary line to Kennedy Street, N.E.; thence in a westerly direction along said Kennedy Street, N.E., to South Dakota Avenue, N.E.; thence in a northwesterly direction along said South Dakota Avenue, N.E., to Riggs Road, N.E.; thence in a westerly direction along Riggs Road, N.E., to North Capitol Street; thence in a southerly direction along

said North Capitol Street to Rock Creek Church Road, N.W.; thence in a southwesterly direction along said Rock Creek Church Road, N.W., to Park Place, N.W.; thence south along said Park Place, N.W., to Michigan Avenue, N.W.; thence in an easterly direction along said Michigan Avenue, N.W., to the point of beginning at its intersection with First Street, N.W.

WARD VI

Starting at the intersection of North Capitol Street and New York Avenue, N.W.; thence southwesterly along New York Avenue, N.W., to Kirby Street, N.W.; thence north along said Kirby Street, N.W., to N Street, N.W.; thence west along said N Street, N.W., to New Jersey Avenue, N.W.; thence northwesterly along said New Jersey Avenue, N.W., to Florida Avenue, N.W.; thence in a northwesterly direction along said Florida Avenue, N.W., to T Street, N.W.; thence in a westerly direction along said T Street, N.W., to Wiltberger Street, N.W.; thence in a southerly direction along said Wiltberger Street, N.W., to S Street, N.W.; thence west along said S Street, N.W., to Eleventh Street, N.W.; thence south along said Eleventh Street, N.W., to P Street, N.W.; thence east said P Street, N.W., to Ninth Street, N.W.; thence in a south along said Ninth Street, N.W., to N Street, N.W.; thence east along said N street, N.W., to the alley running along the eastern side of the Washington Convention Center; thence south along said alley to M Street, N.W.; thence east along said M Street, N.W., to Seventh Street, N.W.; thence south along Seventh Street, N.W., to Massachusetts Avenue, N.W.; to the eastern boundary of Interstate 395; thence south along the said eastern boundary of Interstate 395 to the point where it crosses beneath Constitution Avenue, N.W.; thence east along said Constitution Avenue, N.W., to its intersection with a line extending north from the center line of South Capitol Street through the center of the Capitol building; thence south along said line to Independence Avenue, S.W.; thence west along said Independence Avenue, S.W., to Fourteenth Street, S.W.; thence south along said Fourteenth Street, S.W., to a center line projection of the Washington Channel; thence in a southerly direction along the center line projection of Washington Channel to a center line projection of the Anacostia River; thence in a northeasterly direction along said center line of the Anacostia River to a line extending from the northern property line of the eastern portion of Congressional Cemetery; thence in a westerly direction along said boundary of the Congressional Cemetery to its intersection with Nineteenth Street, S.E.; thence north along said Nineteenth Street, S.E., to East Capitol Street; thence east along the northern portion of East Capitol Street to Twenty-Second Street N.E.; thence in a northerly direction along said Twenty-Second Street N.E., to C Street N.E.; thence west along said C Street N.E., to Nineteenth Street N.E.; thence north along said Nineteenth Street, N.E., to Benning Road, N.E.; thence in a westerly direction along said Benning Road, N.E., to Florida Avenue, N.E.; thence in a northwesterly direction along Florida Avenue, N.E., to New York Avenue, N.E., and west along New York Avenue, N.E., to the point of beginning at its intersection with North Capitol Street.

WARD VII

Starting at the intersection of the State of Maryland-District of Columbia boundary line and the center line of the Anacostia River; thence in a southerly direction along the center line of said Anacostia River to Benning Road, N.E.; thence in a northwesterly direction along said Benning Road to Nineteenth Street, N.E.; thence in a southerly direction along said Nineteenth Street, N.E., to C Street N.E.; thence east along said C Street N.E., to Twenty-Second Street N.E.; thence south along Twenty-Second Street N.E., to the northern portion of East Capitol Street; thence west along said East Capitol Street to Nineteenth Street S.E.; thence south along said Nineteenth Street S.E., to its intersection with the property line of Congressional Cemetery; thence in an easterly direction along said property line to its easternmost point and continuing east on the same bearing to the centerline of the Anacostia River; thence in a southwesterly direction along said Anacostia River to its intersection with Pennsylvania Avenue S.E.; thence along a line connecting to the intersection of Nicholson Street, S.E., and Anacostia Drive S.E.; thence south along said Nicholson Street S.E., to Minnesota Avenue, S.E.; thence northerly along said Minnesota Avenue, S.E., to Twenty-Fifth Street, S.E.; thence south along said Twenty-Fifth Street, S.E., to Naylor Road, S.E.; thence in a southeasterly direction along said Naylor Road, S.E., to the State of Maryland-District of Columbia boundary line; thence in a northeasterly direction along said State of Maryland-District of Columbia boundary line to the eastern corner of the District of Columbia; thence in a northwesterly direction along the State of Maryland-District of Columbia boundary line to the point of beginning at its intersection with the center line of the Anacostia River.

WARD VIII

Starting at the intersection of the Commonwealth of Virginia-District of Columbia boundary line on the Commonwealth of Virginia shore of the Potomac River with the projection of the center line of the Anacostia River; thence in a northerly direction along the Anacostia River to Pennsylvania Avenue, S.E.; thence in an easterly direction along said Pennsylvania Avenue, S.E., to Twenty-Fifth Street, S.E.; thence south along said Twenty-Fifth Street, S.E., to Naylor Road, S.E.; thence in a southeasterly direction along said Naylor Road, S.E., to the State of Maryland-District of Columbia boundary line; thence in a southwesterly direction along said State of Maryland-District of Columbia boundary line to the southern corner of the District of Columbia on the Commonwealth of Virginia shore of the Potomac River; thence along the Commonwealth of Virginia-District of Columbia boundary line to the point of beginning at its intersection with the projection of the center line of the Anacostia River.

(b) Except where otherwise indicated, the boundary line is the center of the street.

(Mar. 16, 1982, D.C. Law 4-87, § 4, 29 DCR 433; Aug. 17, 1991, D.C. Law 9-26, § 2, 38 DCR 4198; Mar. 11, 1992, D.C. Law 9-65, § 2, 39 DCR 8, Oct. 2, 2001,

D.C. Law 14-27, § 2, 48 DCR 6380; Nov. 16, 2011, D.C. Law 19-38, § 2, 58 DCR 5823.)

Prior Codifications. — 1981 Ed., § 1-1333.

Effect of amendments. — D.C. Law 14-27 rewrote the section.

Temporary Amendment of Section. — Section 2 of D.C. Law 19-92, in subsec. (a), substituted “Notwithstanding section 2(h) of the Boundaries Act of 1975, effective December 16, 1975 (D.C. Law 1-38; D.C. Official Code § 1-1011.01(h)), and notwithstanding any other provision, the Council” for “The Council”; in the boundaries for Ward 5 in subsec. (a), substituted “to N Street, N.W.; thence east along said N Street, N.W., to Kirby Street, N.W.; thence south along said Kirby Street, N.W., to New York Avenue, N.W.; thence in an easterly direction along said New York Avenue, N.W.,” for “to New York Avenue, N.W.; thence in an easterly direction along said New York Avenue, N.W.,”; in the boundaries for Ward 8 in subsec. (a), substituted “thence along a line connecting to the intersection of Nicholson Street, S.E., and Anacostia Drive, S.E.; thence south along said Nicholson Street, S.E., to Minnesota Avenue, S.E.; thence in a northerly direction along said Minnesota Avenue, S.E.,” for “thence in an easterly direction along said Pennsylvania Avenue, S.E.,”; and added subsec. (c) to read as follows: “(c) The election ward boundaries set forth in subsection (a) of this section that become effective January 1, 2012, shall apply for the purpose of determining the ward residence of a person signing a nominating petition for the April 3, 2012 primary election during the period from November 14, 2011 through December 31, 2011.”

Section 4(b) of D.C. Law 19-92 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see §§ 2, 4 of Ward Redistricting Emergency Amendment Act of 2011 (D.C. Act 19-218, November 4, 2011, 58 DCR 9464).

For temporary (90 day) amendment of section, see § 2 of Ward Redistricting Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-311, February 21, 2012, 59 DCR 1699).

Legislative history of Law 4-87. — For legislative history of D.C. Law 4-87, see Historical and Statutory Notes following § 1-1041.01.

Legislative history of Law 9-26. — Law 9-26 was introduced in Council and assigned Bill No. 9-158, which was referred to the Committee on Regional Authorities and the Committee of the Whole. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-53 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-63. — Law 9-63 was introduced in Council and assigned Bill No. 9-321. The Bill was adopted on first and second readings on October 1, 1991, and November 5, 1991, respectively. Signed by the Mayor on November 25, 1991, it was assigned Act No. 9-106 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-65. — Law 9-65 was introduced in Council and assigned Bill No. 9-314, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1991, and December 3, 1991, respectively. Signed by the Mayor on December 20, 1991, it was assigned Act No. 9-116 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-27. — Law 14-27, the “Ward Redistricting Amendment Act of 2001,” was introduced in Council and assigned Bill No. 14-137, which was referred to the Committee on Labor, Voting Rights, and Redistricting. The Bill was adopted on first and second readings on June 5, 2001, and June 19, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-87 and transmitted to both Houses of Congress for its review. D.C. Law 14-27 became effective on October 2, 2001.

Legislative history of Law 19-38. — Law 19-38, the “Ward Redistricting Amendment Act of 2011,” was introduced in Council and assigned Bill No. 19-219, which was retained by the Council. The Bill was adopted on first and second readings on June 7, 2011, and June 21, 2011, respectively. Signed by the Mayor on July 11, 2011, it was assigned Act No. 19-97 and transmitted to both Houses of Congress for its review. D.C. Law 19-38 became effective on November 16, 2011.

§ 1-1041.04. Residency requirement.

No official elected from any ward or from any single-member district shall be required to forfeit his or her office solely by reason of a change in boundaries which places the residence of such official outside the ward or single-member district from which he or she was elected. Such official shall be permitted to

complete his or her term of office, but in future elections he or she may be a candidate only in the ward or single-member district in which he or she resides.

(Mar. 16, 1982, D.C. Law 4-87, § 6, 29 DCR 433.)

Prior Codifications. — 1981 Ed., § 1-1334. legislative history of D.C. Law 4-87, see Historical and Statutory Notes following § 1-1041.01.
Legislative history of Law 4-87. — For

Subchapter VI. National Popular Vote Interstate Agreement.

§ 1-1051.01. Enactment.

Agreement Among The States To Elect The President By National Popular Vote.

ARTICLE I MEMBERSHIP

Any State of the United States and the District of Columbia may become a member of this agreement by enacting this agreement.

ARTICLE II RIGHT OF THE PEOPLE IN MEMBER STATES TO VOTE
FOR PRESIDENT AND VICE PRESIDENT

Each member state shall conduct a statewide popular election for President and Vice President of the United States.

ARTICLE III MANNER OF APPOINTING PRESIDENTIAL ELECTORS IN
MEMBER STATES

Prior to the time set by law for the meeting and voting by the presidential electors, the chief election official of each member state shall determine the number of votes for each presidential slate in each State of the United States and in the District of Columbia in which votes have been cast in a statewide popular election and shall add such votes together to produce a “national popular vote total” for each presidential slate.

The chief election official of each member state shall designate the presidential slate with the largest national popular vote total as the “national popular vote winner.”

The presidential elector certifying official of each member state shall certify the appointment in that official’s own state of the elector slate nominated in that state in association with the national popular vote winner.

At least 6 days before the day fixed by law for the meeting and voting by the presidential electors, each member state shall make a final determination of the number of popular votes cast in the state for each presidential slate and shall communicate an official statement of such determination within 24 hours to the chief election official of each other member state.

The chief election official of each member state shall treat as conclusive an official statement containing the number of popular votes in a state for each presidential slate made by the day established by federal law for making a

state's final determination conclusive as to the counting of electoral votes by Congress.

In event of a tie for the national popular vote winner, the presidential elector certifying official of each member state shall certify the appointment of the elector slate nominated in association with the presidential slate receiving the largest number of popular votes within that official's own state.

If, for any reason, the number of presidential electors nominated in a member state in association with the national popular vote winner is less than or greater than that state's number of electoral votes, the presidential candidate on the presidential slate that has been designated as the national popular vote winner shall have the power to nominate the presidential electors for that state and that state's presidential elector certifying official shall certify the appointment of such nominees.

The chief election official of each member state shall immediately release to the public all vote counts or statements of votes as they are determined or obtained.

This article shall govern the appointment of presidential electors in each member state in any year in which this agreement is, on July 20, in effect in states cumulatively possessing a majority of the electoral votes.

ARTICLE IV OTHER PROVISIONS

This agreement shall take effect when states cumulatively possessing a majority of the electoral votes have enacted this agreement in substantially the same form and the enactments by such states have taken effect in each state.

Any member state may withdraw from this agreement, except that a withdrawal occurring 6 months or less before the end of a President's term shall not become effective until a President or Vice President shall have been qualified to serve the next term.

The chief executive of each member state shall promptly notify the chief executive of all other states of when this agreement has been enacted and has taken effect in that official's state, when the state has withdrawn from this agreement, and when this agreement takes effect generally.

This agreement shall terminate if the Electoral College is abolished.

If any provision of this agreement is held invalid, the remaining provisions shall not be affected.

ARTICLE V DEFINITIONS

For the purposes of this agreement, the term:

"Chief election official" shall mean the state official or body that is authorized to certify the total number of popular votes for each presidential slate;

"Chief executive" shall mean the Governor of a State of the United States or the Mayor of the District of Columbia;

"Elector slate" shall mean a slate of candidates who have been nominated in a state for the position of presidential elector in association with a presidential slate;

“Presidential elector” shall mean an elector for President and Vice President of the United States;

“Presidential elector certifying official” shall mean the state official or body that is authorized to certify the appointment of the state’s presidential electors;

“Presidential slate” shall mean a slate of 2 persons, the first of whom has been nominated as a candidate for President of the United States and the second of whom has been nominated as a candidate for Vice President of the United States, or any legal successors to such persons, regardless of whether both names appear on the ballot presented to the voter in a particular state;

“State” shall mean a State of the United States and the District of Columbia; and

“Statewide popular election” shall mean a general election in which votes are cast for presidential slates by individual voters and counted on a statewide basis.

(Dec. 7, 2010, D.C. Law 18-274, § 2, 57 DCR 9869.)

Legislative history of Law 18-274. — Law 18-274, the “National Popular Vote Interstate Agreement Act of 2010”, was introduced in Council and assigned Bill No. 18-558, which was referred to the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on July

13, 2010, and September 21, 2010, respectively. Signed by the Mayor on October 12, 2010, it was assigned Act No. 18-558 and transmitted to both Houses of Congress for its review. D.C. Law 18-274 became effective on December 7, 2010.

Subchapter VII. Accommodations for Military and Overseas Voters.

§ 1-1061.01. Short title.

This subchapter may be cited as the “Uniform Military and Overseas Voters Act of 2012.”

(June 5, 2012, D.C. Law 19-137, § 101, 59 DCR 2542.)

Legislative history of Law 19-137. — Law 19-137, the “Comprehensive Military and Overseas Voters Accommodation Amendment Act of 2012”, was introduced in Council and assigned Bill No. 19-356, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 7, 2012, and March 6, 2012, re-

spectively. Signed by the Mayor on March 27, 2012, it was assigned Act No. 19-334 and transmitted to both Houses of Congress for its review. D.C. Law 19-137 became effective on June 5, 2012.

Editor’s notes. — Uniform Law: This section is based on § 1 of the Uniform Military and Overseas Voters Act.

§ 1-1061.02. Definitions.

For the purposes of this subchapter, the term:

(1) “Board” means the Board of Elections and Ethics, established by D.C. Code § 1-1001.03.

(2) “Covered voter” means:

(A) A uniformed-service voter or an overseas voter who is registered to vote in the District;

(B) A uniformed-service voter whose voting residence is in the District and who otherwise satisfies the District's voter eligibility requirements;

(C) An overseas voter who, before leaving the United States, was last eligible to vote in the District and, except for a District residency requirement, otherwise satisfies the District's voter eligibility requirements;

(D) An overseas voter who, before leaving the United States, would have been last eligible to vote in the District had the voter then been of voting age and, except for a District residency requirement, otherwise satisfies the District's voter eligibility requirements; or

(E) An overseas voter who was born outside the United States, is not described in subparagraphs (C) or (D) of this paragraph, and, except for a District residency requirement, otherwise satisfies the District's voter eligibility requirements if:

(i) Before leaving the United States, the voter's last place of residence was with a parent or legal guardian who resided within the District; and

(ii) The voter has not previously registered to vote in any other state.

(3) "Dependent" means an individual recognized as a dependent of a uniformed service voter.

(4) "District" means the District of Columbia.

(5) "Federal postcard application" means the application prescribed under section 101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1986 (100 Stat. 924; 42 U.S.C. § 1973ff(b)(2)).

(6) "Federal write-in absentee ballot" means the ballot described in section 103 of the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1986 (100 Stat. 925; 42 U.S.C. § 1973ff-2).

(7) "Military-overseas ballot" means:

(A) A federal write-in absentee ballot;

(B) A ballot specifically prepared or distributed for use by a covered voter in accordance with this subchapter; or

(C) A ballot cast by a covered voter in accordance with this subchapter.

(8) "Overseas voter" means a United States citizen who is outside the United States.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(10) "Uniformed service" means:

(A) Active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States;

(B) The Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(C) The National Guard and state militia.

(11) "Uniformed-service voter" means an individual who is qualified to vote and is:

(A) A member of the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States who is on active duty;

(B) A member of the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States;

(C) A member on activated status of the National Guard or state militia; or

(D) A spouse or dependent of a member referred to in this paragraph.

(12) “United States,” used in the territorial sense, means the several states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(June 5, 2012, D.C. Law 19-137, § 102, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor’s notes. — Uniform Law: This section is based on § 2 of the Uniform Military and Overseas Voters Act.

§ 1-1061.03. Elections covered.

The voting procedures in this subchapter apply to:

(1) A general, special, or primary election for President, Vice President, or District of Columbia Delegate to the United States House of Representatives;

(2) A general, special, or primary election for Mayor, Chairman of the Council, member of the Council, member of the State Board of Education, or Attorney General for the District of Columbia;

(3) An initiative, referendum, or recall measure; and

(4) A proposed Charter amendment.

(June 5, 2012, D.C. Law 19-137, § 103, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor’s notes. — Uniform Law: This section is based on § 3 of the Uniform Military and Overseas Voters Act.

§ 1-1061.04. Role of Board.

(a) The Board is responsible for implementing this subchapter and the District’s responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1986 (100 Stat. 924; 42 U.S.C. 1973ff et seq.).

(b) The Board shall make available to covered voters information regarding voter registration procedures for covered voters and procedures for casting military-overseas ballots.

(c) The Board shall establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information under this subchapter.

(d) The Board shall:

(1) Develop standardized absentee-voting materials, including privacy and transmission envelopes, authentication materials, and voting instructions to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the District; and

(2) To the extent reasonably possible, coordinate with other states to carry out this subsection.

(e) The Board shall prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of an overseas-military ballot. The declaration must be based on the declaration prescribed to accompany a federal write-in absentee ballot, as modified to be consistent with this subchapter. The Board shall ensure that a form for the execution of the declaration, including an indication of the date of execution of the declaration, is a prominent part of all balloting materials for which the declaration is required.

(June 5, 2012, D.C. Law 19-137, § 104, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor's notes. — Uniform Law: This section is based on § 4 of the Uniform Military and Overseas Voters Act.

§ 1-1061.05. Overseas voter's registration address.

In registering to vote, an overseas voter who is eligible to vote in the District must be assigned to the voting precinct of the address of the last place of residence of the voter in the District, or, in the case of a voter described by § 1-1061.02(2)(E), the address of the last place of residence in the District of the parent or legal guardian of the voter. If that address is no longer a recognized residential address, the voter must be assigned an address for voting purposes.

(June 5, 2012, D.C. Law 19-137, § 105, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor's notes. — Uniform Law: This section is based on § 5 of the Uniform Military and Overseas Voters Act.

§ 1-1061.06. Methods of registering to vote.

(a) To apply to register to vote, a covered voter may use a federal postcard application or the application's electronic equivalent, or any other method approved under federal law.

(b) A covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote if the declaration is received by 30 days before the election.

(c) The Board shall ensure that the electronic transmission system described in § 1-1061.04(c) is capable of accepting both a federal postcard application and any other approved electronic registration application sent to the Board. The voter may use the electronic transmission system or any other method approved under federal law to register to vote.

(June 5, 2012, D.C. Law 19-137, § 106, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor's notes. — Uniform Law: This section is based on § 6 of the Uniform Military and Overseas Voters Act.

§ 1-1061.07. Methods of applying for military-overseas ballot.

(a) A covered voter who is registered to vote in the District may apply for a military-overseas ballot using either the regular absentee ballot application on the form prescribed by the Board or the federal postcard application or the application's electronic equivalent.

(b) A covered voter who is not registered to vote in the District may use a federal postcard application or the application's electronic equivalent to apply to register to vote under § 1-1061.06 and for a military-overseas ballot.

(c) The Board shall ensure that the electronic transmission system described in § 1-1061.04(c) is capable of accepting the submission of both a federal postcard application and any other approved electronic military-overseas ballot application sent to the Board. The voter may use the electronic transmission system or any other method approved under federal law to apply for a military-overseas ballot.

(d) A covered voter may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the Board by the 7th day before the election.

(e) To receive the benefits of this subchapter, a covered voter must inform the Board that the voter is a covered voter. Methods of informing the Board that a voter is a covered voter include:

(1) The use of a federal postcard application or federal write-in absentee ballot;

(2) The use of an overseas address on an approved voter registration application or ballot application; and

(3) The inclusion on an approved voter registration application or ballot application of other information sufficient to identify the voter as a covered voter.

(f) This subchapter does not preclude a covered voter from voting with a regular absentee ballot as authorized by the Board.

(June 5, 2012, D.C. Law 19-137, § 107, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor's notes. — Uniform Law: This section is based on § 7 of the Uniform Military and Overseas Voters Act.

§ 1-1061.08. Timeliness and scope of application for military-overseas ballot.

An application for a military-overseas ballot is timely if received by the 7th day before the election. An application for a military-overseas ballot for a primary election, whether or not timely, is effective as an application for a

military-overseas ballot for the general election.

(June 5, 2012, D.C. Law 19-137, § 108, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor's notes. — Uniform Law: This section is based on § 8 of the Uniform Military and Overseas Voters Act.

§ 1-1061.09. Transmission of unvoted ballots.

(a) For an election described in § 1-1061.03 for which the District has not received a waiver pursuant to section 102(g)(2) of the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1986 (100 Stat. 925; 42 U.S.C. § 1973ff-1(g)(2)), no later than 45 days before the election or, if the 45th day before the election is a weekend or holiday, no later than the business day preceding the 45th day, the Board shall transmit a ballot and balloting materials to all covered voters who by that date submit a valid military-overseas ballot application.

(b) A covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail delivery, or, if offered by the District, Internet delivery. The Board shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.

(c) If a ballot application from a covered voter arrives after the District begins transmitting ballots and balloting materials to voters, the Board shall transmit the ballot and balloting materials to the voter no later than 2 business days after the application arrives.

(June 5, 2012, D.C. Law 19-137, § 109, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor's notes. — Uniform Law: This section is based on § 9 of the Uniform Military and Overseas Voters Act.

§ 1-1061.10. Timely casting of ballot.

To be valid, a military-overseas ballot must be submitted by the voter on the date of the election by mailing or other authorized means of delivery no later than 12:01 a.m. at the place where the voter completes the ballot.

(June 5, 2012, D.C. Law 19-137, § 110, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor's notes. — Uniform Law: This section is based on § 10 of the Uniform Military and Overseas Voters Act.

§ 1-1061.11. Federal write-in absentee ballot.

A covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in § 1-1061.03.

(June 5, 2012, D.C. Law 19-137, § 111, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor's notes. — Uniform Law: This section is based on § 11 of the Uniform Military and Overseas Voters Act.

§ 1-1061.12. Receipt of voted ballot.

(a) A valid military-overseas ballot cast in accordance with § 1-1061.10 must be counted if it is delivered within 10 days after the election to the address that the Board has specified.

(b) If, at the time of completing a military-overseas ballot and balloting materials, the voter has declared under penalty of perjury that the ballot was timely submitted, the ballot may not be rejected on the basis that it has a late postmark, an unreadable postmark, or no postmark.

(June 5, 2012, D.C. Law 19-137, § 112, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor's notes. — Uniform Law: This section is based on § 12 of the Uniform Military and Overseas Voters Act.

§ 1-1061.13. Declaration.

A military-overseas ballot must include or be accompanied by a declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of making a false statement under the laws of the District.

(June 5, 2012, D.C. Law 19-137, § 113, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor's notes. — Uniform Law: This section is based on § 13 of the Uniform Military and Overseas Voters Act.

§ 1-1061.14. Confirmation of receipt of application and voted ballot.

The Board shall implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether:

- (1) The voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted; and
- (2) The voter's military-overseas ballot has been received and the current status of the ballot.

(June 5, 2012, D.C. Law 19-137, § 114, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor's notes. — Uniform Law: This section is based on § 14 of the Uniform Military and Overseas Voters Act.

§ 1-1061.15. Use of voter's electronic-mail address.

- (a) The Board shall request an electronic-mail address from each covered

voter who registers to vote after June 5, 2012. An electronic-mail address provided by a covered voter, or by any other District voter, may not be made available to the public or any individual or organization other than an authorized agent of the Board and is exempt from disclosure under subchapter II of Chapter 5 of Title 2. The address may be used only for official communication with the voter about the voting process, including transmitting military-overseas ballots and election materials if the voter has requested electronic transmission, and verifying the voter's mailing address and physical location. The request for an electronic-mail address must describe the purposes for which the electronic-mail address may be used and include a statement that any other use or disclosure of the electronic-mail address is prohibited.

(b) A covered voter who provides an electronic-mail address may request that the voter's application for a military-overseas ballot be considered a standing request for electronic delivery of a ballot for all elections held through December 31 of the year of the date of the application or another shorter period that the voter specifies. The Board shall provide a military-overseas ballot to a voter who makes a standing request for each election to which the request is applicable. A covered voter who is entitled to receive a military-overseas ballot for a primary election under this subsection is entitled to receive a military-overseas ballot for the general election.

(June 5, 2012, D.C. Law 19-137, § 115, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor's notes. — Uniform Law: This section is based on § 15 of the Uniform Military and Overseas Voters Act.

§ 1-1061.16. Publication of election notice.

(a) At least 100 days before a regularly scheduled election and as soon as practicable before an election not regularly scheduled, the Board shall prepare an election notice, to be used in conjunction with a federal write-in absentee ballot. The election notice must contain a list of all of the ballot measures and federal and District offices that as of that date the Board expects to be on the ballot on the date of the election. The notice also must contain specific instructions for how a voter is to indicate on the federal write-in absentee ballot the voter's choice for each office to be filled and for each ballot measure to be contested.

(b) A covered voter may request a copy of an election notice. The Board shall send the election notice to the voter by facsimile, electronic mail, or regular mail, as the voter requests.

(c) No later than 45 days before an election, the Board shall update the election notice described in subsection (a) of this section with the certified candidates for each office and ballot measure questions and make the updated notice publicly available.

(d) The Board shall make the election notice prepared under subsection (a) of this section and updated versions of the election notice regularly available on the Board's Internet website.

(June 5, 2012, D.C. Law 19-137, § 116, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor's notes. — Uniform Law: This section is based on § 16 of the Uniform Military and Overseas Voters Act.

§ 1-1061.17. Prohibition of nonsubstantive requirements.

(a) If a voter's mistake or omission in the completion of a document under this subchapter does not prevent determining whether a covered voter is eligible to vote, the mistake or omission shall not invalidate the document. Failure to satisfy a nonsubstantive requirement, such as using paper or envelopes of a specified size or weight, shall not invalidate a document submitted under this subchapter. In a write-in ballot authorized by this subchapter or in a vote for a write-in candidate on a regular ballot, if the intention of the voter is discernable under the District's uniform definition of what constitutes a vote, an abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be accepted as a valid vote.

(b) Notarization is not required for the execution of a document under this subchapter. An authentication, other than the declaration specified in § 1-1061.13 or the declaration on the federal postcard application and federal write-in absentee ballot, is not required for the execution of a document under this subchapter. The declaration and any information in the declaration may be compared with information on file to ascertain the validity of the document.

(June 5, 2012, D.C. Law 19-137, § 117, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor's notes. — Uniform Law: This section is based on § 17 of the Uniform Military and Overseas Voters Act.

§ 1-1061.18. Equitable relief.

The Superior Court of the District of Columbia may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with or to enforce this subchapter on application by:

- (1) A covered voter alleging a grievance under this subchapter; or
- (2) An election official in the District.

(June 5, 2012, D.C. Law 19-137, § 118, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor's notes. — Uniform Law: This section is based on § 18 of the Uniform Military and Overseas Voters Act.

§ 1-1061.19. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(June 5, 2012, D.C. Law 19-137, § 119, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor's notes. — Uniform Law: This section is based on § 19 of the Uniform Military and Overseas Voters Act.

§ 1-1061.20. Relation to Electronic Signatures in Global and National Commerce Act.

This subchapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 et seq.) ('Act'), but does not modify, limit, or supersede section 101(c) of that Act (15 U.S.C. § 7001(c)), or authorize electronic delivery of any of the notices described in section 103(b) of that Act (15 U.S.C. § 7003(b)).

(June 5, 2012, D.C. Law 19-137, § 120, 59 DCR 2542.)

Legislative history of Law 19-137. — For history of Law 19-137, see notes under § 1-1061.01.

Editor's notes. — Uniform Law: This section is based on § 20 of the Uniform Military and Overseas Voters Act.

GOVERNMENT ORGANIZATION

CHAPTER 11. ELECTION CAMPAIGNS; LOBBYING; CONFLICT OF INTEREST [REPEALED].

Subchapter I. General Provisions

Sec.

1-1101.01. Definitions. [Repealed by D.C. Law 19-124].

PART B

Financial Disclosures

1-1102.01. Political committees. [Repealed by D.C. Law 19-124].

1-1102.02. Principal campaign committee. [Repealed by D.C. Law 19-124].

1-1102.03. Designation of campaign depositories; petty cash fund. [Repealed by D.C. Law 19-124].

1-1102.04. Statement of organization of political committees. [Repealed by D.C. Law 19-124].

1-1102.05. Registration statement of candidate; depository information. [Repealed by D.C. Law 19-124].

1-1102.06. Reports of receipts and expenditures by political committees and candidates. [Repealed by D.C. Law 19-124].

1-1102.07. Reports by others than political committees and candidates. [Repealed by D.C. Law 19-124].

1-1102.08. Formal requirements respecting reports and statements. [Repealed by D.C. Law 19-124].

1-1102.09. Exemption for total expenses under \$500. [Repealed by D.C. Law 19-124].

1-1102.10. Identification of campaign literature. [Repealed by D.C. Law 19-124].

1-1102.11. Candidate's liability for financial obligation incurred by political committee. [Repealed by D.C. Law 19-124].

PART C

Director of Campaign Finance

1-1103.01. Office of Director of Campaign Finance established; enforcement of chapter. [Repealed by D.C. Law 19-124].

1-1103.02. Powers of Director. [Repealed by D.C. Law 19-124].

1-1103.03. Duties of Director. [Repealed by D.C. Law 19-124].

1-1103.04. Assistance of Comptroller General. [Repealed by D.C. Law 19-124].

1-1103.05. District of Columbia Board of Elections and Ethics created; penal-

Sec.

ties; advisory opinions. [Repealed by D.C. Law 19-124].

PART D

Constituent Services

1-1104.01, 1-1104.02. [Repealed].

1-1104.03. Constituent services. [Repealed by D.C. Law 19-124].

PART E

Lobbying

1-1105.01. Definitions. [Repealed by D.C. Law 19-124].

1-1105.02. Persons required to register. [Repealed by D.C. Law 19-124].

1-1105.03. Exceptions. [Repealed by D.C. Law 19-124].

1-1105.04. Registration form. [Repealed by D.C. Law 19-124].

1-1105.05. Activity reports. [Repealed by D.C. Law 19-124].

1-1105.06. Prohibited activities. [Repealed by D.C. Law 19-124].

1-1105.07. Penalties; prohibition from serving as lobbyist; citizen suits. [Repealed by D.C. Law 19-124].

PART F

Conflict of Interest and Disclosure

1-1106.01. Conflict of interest. [Repealed by D.C. Law 19-124].

1-1106.02. Disclosure of financial interest. [Repealed by D.C. Law 19-124].

PART FI

Use of Government Resources for Campaign-Related Activities

1-1106.51. Prohibition on the use of District government resources for campaign related activities. [Repealed by D.C. Law 19-124].

PART G

Miscellaneous Provisions

1-1107.01. Penalties; prosecutions. [Repealed by D.C. Law 19-124].

1-1107.01a. Document under oath. [Repealed by D.C. Law 19-124].

1-1107.02. Use of surplus campaign funds. [Repealed by D.C. Law 19-124].

1-1107.03. Authority of Council. [Repealed by D.C. Law 19-124].

PART H

Subchapter III. Exploratory Committees

Limitations on Honoraria and Royalties

Sec.

1-1108.01. Limitations on honoraria and royalties. [Repealed by D.C. Law 19-124].

Subchapter II. Campaign Contribution Limitation

1-1131.01. Contribution limitations. [Repealed by D.C. Law 19-124].

1-1131.02. Partnership contributions. [Repealed by D.C. Law 19-124].

1-1131.03. Reporting requirements. [Repealed by D.C. Law 19-124].

Sec.

1-1151.01. Definitions. [Repealed by D.C. Law 19-124].

1-1151.02. Reports of exploratory committees. [Repealed by D.C. Law 19-124].

1-1151.03. Fund balance requirements. [Repealed by D.C. Law 19-124].

1-1151.04. Aggregate and individual contribution limits. [Repealed by D.C. Law 19-124].

1-1151.05. Contribution prohibition. [Repealed by D.C. Law 19-124].

1-1151.06. Time limit for the operation of an exploratory committee. [Repealed by D.C. Law 19-124].

*Subchapter I. General Provisions.***§ 1-1101.01. Definitions. [Repealed by D.C. Law 19-124].**

When used in this subchapter, unless otherwise provided:

(1) The term “election” means a primary, general, or special election held in the District of Columbia for the purpose of nominating an individual to be a candidate for election to office or for the purpose of electing a candidate to office or for the purpose of deciding an initiative, referendum, or recall measure, and includes a convention or caucus of a political party held for the purpose of nominating such a candidate.

(2) The term “candidate” means an individual who seeks nomination for election, or election, to office, whether or not such individual is nominated or elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if he or she has: (A) obtained or authorized any other person to obtain nominating petitions to qualify himself or herself for nomination for election, or election, to office; (B) received contributions or made expenditures, or has given his or her consent for any other person to receive contributions or make expenditures, with a view to bringing about his or her nomination for election, or election, to office; or (C) reason to know, or knows, that any other person has received contributions or made expenditures for that purpose, and has not notified that person in writing to cease receiving contributions or making expenditures for that purpose; provided, that an individual shall not be deemed a candidate if he notifies each person who has received contributions or made expenditures that such individual is only testing the waters, has not yet made any decision whether to seek nomination or election to public office, and is not a candidate. A person who is deemed to be a candidate for the purposes of this subchapter shall not be deemed, solely by reason of that status, to be a candidate for the purposes of any other federal law.

(3) The term “office” means the office of Mayor of the District of Columbia, Chairman or member of the Council of the District of Columbia, member of the Board of Education of the District of Columbia, or an official of a political party.

(4) the term “official of a political party” means:

(A) National committeemen and national committeewomen;

(B) Delegates to conventions of political parties nominating candidates for the Presidency and Vice Presidency of the United States;

(C) Alternates to the officials referred to in subparagraphs (A) and (B) of this paragraph, where permitted by political party rules; and

(D) Such members and officials of local committees of political parties as may be designated by the duly authorized local committees of such parties for election, by public ballot, at large or by ward in the District of Columbia.

(5) The term “political committee” means any proposer, individual, committee (including a principal campaign committee), club, association, organization, or other group of individuals organized for the purpose of, or engaged in: promoting or opposing a political party, promoting or opposing the nomination or election of an individual to office, or promoting or opposing any initiative, referendum, or recall.

(6)(A) The term “contribution” means:

(i) A gift, subscription (including any assessment, fee, or membership dues), loan (except a loan made in the regular course of business by a business engaged in the business of making loans), advance, or deposit of money or anything of value, made for the purpose of financing, directly or indirectly, the election campaign of a candidate or any operations of a political committee or the campaign, or any operations of a political committee involved in such a campaign, to obtain signatures on any initiative, referendum, or recall measure, or to bring about the ratification or defeat of any initiative, referendum, or recall measure;

(ii) A contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose;

(iii) A transfer of funds between political committees; or

(iv) The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or committee without charge, or for less than reasonable value, for any such purpose or the furnishing of goods, advertising, or services to a candidate’s campaign without charge, or at a rate which is less than the rate normally charged for such services.

(B) Notwithstanding the foregoing, such term shall not be construed to include:

(i) Services provided without compensation, by individuals (including accountants and attorneys) volunteering a portion or all of their time on behalf of a candidate or political committee;

(ii) Personal services provided without compensation by individuals volunteering a portion or all of their time to a candidate or political committee;

(iii) Communications by an organization, other than a political party, solely to its members and their families on any subject;

(iv) Communications (including advertisements) to any person on any subject by any organization which is organized solely as an issue-oriented organization, which communications neither endorse nor oppose any candidate for office;

(v) Normal billing credit for a period not exceeding 30 days;

(vi) Services of an informational or polling nature, and related thereto, designed to seek the opinion(s) of voters concerning the possible candidacy of qualified electors for public office, prior to such qualified elector's becoming a candidate as provided in this subchapter;

(vii) The use of real or personal property, and the costs of invitations, food and beverages voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for related activities; or

(viii) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge if such charge for use in a candidate's campaign is at least equal to the cost of such food or beverage to the vendor; to the extent that the provisions of sub-subparagraphs (vii) and (viii) of this subparagraph do not exceed \$500 each with respect to any candidate's election.

(7) The term "expenditure" means:

(A) A purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of financing, directly or indirectly, the election campaign of a candidate or any operations of a political committee or the election campaign, or any operations of a political committee involved in such a campaign, to obtain signatures on any initiative, referendum, or recall petition, or to bring about the ratification or defeat of any initiative, referendum, or recall measure;

(B) A contract, promise, or agreement, whether or not legally enforceable, to make an expenditure;

(C) A transfer of funds between political committees; and

(D) Notwithstanding the foregoing provisions of this paragraph, such term shall not be construed to include the incidental expenses (as defined by the Board) made by or on behalf of individuals in the course of volunteering their time on behalf of a candidate or political committee or the use of real or personal property and the cost of any food or beverage voluntarily provided by an individual to a candidate in rendering voluntary personal services on the individual's residential premises for candidate-related activity if the cumulative value of such activities by such individual on behalf of any candidate do not exceed \$500 with respect to any election.

(8) The term "person" means an individual, partnership, committee, corporation, labor organization, and any other organization.

(9) The term "Director" means the Director of Campaign Finance of the District of Columbia Board of Elections and Ethics created by part C of subchapter I of this chapter.

(10) The term "political party" means an association, committee, or organization which nominates a candidate for election to any office and qualifies under Chapter 10 of this title, to have the names of its nominees appear on the election ballot as the candidate of that association, committee, or organization.

(11) The term "Board" means the District of Columbia Board of Elections and Ethics established under Chapter 10 of this title and redesignated by § 1-1103.05.

(12) The term “domestic partner” shall have the same meaning as provided in § 32-701(3).

(Aug. 14, 1974, 88 Stat. 447, Pub. L. 93-376, title I, § 102; Sept. 2, 1976, D.C. Law 1-79, title VIII, § 806, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; June 7, 1979, D.C. Law 3-1, § 3(a), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 3(a), (p), (r), (s), 29 DCR 458; Feb. 2, 2008, D.C. Law 17-104, § 8, 55 DCR 12218; Sept. 12, 2008, D.C. Law 17-231, § 6(a), 55 DCR 6758; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1401. 1973 Ed., § 1-1121.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7 of Exploratory Committee Disclosure Informational Report and Contribution Prohibition Temporary Amendment Act of 2005 (D.C. Law 16-34, October 20, 2005, law notification 52 DCR 10008).

For temporary (225 day) amendment of section, see § 7 of Exploratory Committee Regulation Temporary Amendment Act of 2007 (D.C. Law 17-2, April 18, 2007, law notification 54 DCR 6581).

Emergency legislation. — For temporary (90 day) amendment of section, see § 7 of Exploratory Committee Disclosure Informational Report and Contribution Prohibition Emergency Amendment Act of 2005 (D.C. Act 16-100, June 21, 2005, 52 DCR 6086).

For temporary (90 day) amendment of section, see § 7 of Exploratory Committee Disclosure Information Report and Contribution Prohibition Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-178, October 4, 2005, 52 DCR 9076).

For temporary (90 day) amendment of section, see § 6 of Exploratory Committee Regulation Emergency Amendment Act of 2007 (D.C. Act 17-13, January 29, 2007, 54 DCR 1520).

For temporary (90 day) addition of sections, see §§ 2 to 237 of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

For temporary (90 day) addition of section, see § 501(a) to (i) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-79. — Law 1-79 was introduced in Council and assigned Bill No. 1-120, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 3, 1976 and May 18, 1976, respectively. Signed by the Mayor on June 18, 1976, it was assigned Act No. 1-131 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-126. — Law 1-126 was introduced in Council and assigned Bill No. 1-364, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 22, 1976 and December 7, 1976, respectively. Enacted without signature by the Mayor on January 25, 1977, it was assigned Act No. 1-225 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-101. — Law 2-101 was introduced in Council and assigned Bill No. 2-218, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 2, 1978 and May 16, 1978, respectively. Signed by the Mayor on June 15, 1978, it was assigned Act No. 2-207 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-1. — Law 3-1 was introduced in Council and assigned Bill No. 3-2, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 13, 1979 and March 27, 1979, respectively. Signed by the Mayor on April 10, 1979, it was assigned Act No. 3-18 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-88. — Law 4-88 was introduced in Council and assigned Bill No. 4-271, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 24, 1981 and December 8, 1981, respectively. Signed by the Mayor on January 20, 1982, it was assigned Act No. 4-142 and transmitted to both Houses of Congress for its review.

Legislative history of Law 17-104. — Law 17-104, the “Exploratory Committee Regula-

tion Amendment Act of 2007", was introduced in Council and assigned Bill No. 17-36 which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on October 2, 2007, and November 6, 2007, respectively. Signed by the Mayor on November 28, 2007, it was assigned Act No. 17-223 and transmitted to both Houses of Congress for its review. D.C. Law 17-104 became effective on February 2, 2008.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 1-301.45.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Editor's notes. — Applicability of chapter to Law 11-144: Section 4 of D.C. Law 11-144, the Contribution Limitation Initiative Amendment Act of 1996, provided that D.C. Code § 1-1101.01 et seq. shall apply to the act. D.C. Law 11-144 repeals § 1-1104.01 and amends §§ 1-1131.01, 1-1131.03, and 1-1104.02.

Part B

FINANCIAL DISCLOSURES.

§ 1-1102.01. Political committees. [Repealed by D.C. Law 19-124].

(a) Every political committee shall have a chairman and a treasurer. No contribution and no expenditure shall be accepted or made by or on behalf of a political committee at a time when there is a vacancy in the office of treasurer thereof and no other person has been designated and has agreed to perform the functions of treasurer. No expenditure shall be made for or on behalf of a political committee without the authorization of its chairman or treasurer, or their designated agents.

(b) Every person who receives a contribution of \$50 or more for or on behalf of a political committee shall, on demand of the treasurer, and in any event within 5 days after receipt of such contribution, submit to the treasurer of such committee a detailed account thereof, including the amount, the name and address (including the occupation and the principal place of business, if any) of the person making such contribution, and the date on which such contribution was received. All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members, or associates of such committee.

(c) Except for accounts of expenditures made out of the petty cash fund provided for under § 1-1102.03(b), the treasurer of a political committee, and each candidate, shall keep a detailed and exact account of:

- (1) All contributions made to or for such political committee or candidate;
- (2) The full name and mailing address (including the occupation and the principal place of business, if any) of every person making a contribution of \$50 or more, and the date and amount thereof;
- (3) All expenditures made by or on behalf of such committee or candidate; and

(4) The full name and mailing address (including the occupation and the principal place of business, if any) of every person to whom any expenditure is made, the date and amount thereof and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made.

(d) The treasurer or candidate shall obtain and preserve such receipted bills and records as may be required by the Board.

(e) Each political committee and candidate shall include on the face or front page of all literature and advertisement soliciting funds the following notice: "A copy of our report is filed with the Director of Campaign Finance of the District of Columbia Board of Elections and Ethics."

(Aug. 14, 1974, 88 Stat. 449, Pub. L. 93-376, title II, § 201; Sept. 2, 1976, D.C. Law 1-79, title VIII, § 803, 23 DCR 2050; Mar. 16, 1982, D.C. Law 4-88, § 3(r), 29 DCR 458; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1411. 1973 Ed., § 1-1131.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1102.02. Principal campaign committee. [Repealed by D.C. Law 19-124].

(a) Each candidate for office shall designate in writing 1 political committee as his or her principal campaign committee. The principal campaign committee shall receive all reports made by any other political committee accepting contributions or making expenditures for the purpose of influencing the nomination for election, or election, of the candidate who designated it as his or her principal campaign committee. The principal committee may require additional reports to be made to it by any such political committee and may designate the time and number of all reports. No political committee may be designated as the principal campaign committee of more than 1 candidate, except a principal campaign committee supporting the nomination or election of a candidate as an official of a political party may support the nomination or election of more than 1 such candidate, but may not support the nomination or election of a candidate for any public office.

(b) Each statement (including the statement of organization required under § 1-1102.04) or report that a political committee is required to file with or furnish to the Director under the provisions of this subchapter shall also be furnished, if that political committee is not a principal campaign committee, to the campaign committee for the candidate on whose behalf that political committee is accepting or making, or intends to accept or make, contributions or expenditures.

(c) The treasurer of each political committee which is a principal campaign committee, and each candidate, shall receive all reports and statements filed with or furnished to it or him or her by other political committees, consolidate, and furnish the reports and statements to the Director, together with the reports and statements of the principal campaign committee of which he or she is treasurer or which was designated by him or her, in accordance with the provisions of this part and regulations prescribed by the Board.

(Aug. 14, 1974, 88 Stat. 450, Pub. L. 93-376, title II, § 202; Apr. 23, 1977, D.C.

Law 1-126, title IV, § 402, 24 DCR 2372; Mar. 16, 1982, D.C. Law 4-88, § 3(p), (r), 29 DCR 458; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1412. 1973 Ed., § 1-1132.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-126. — For

legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1102.03. Designation of campaign depositories; petty cash fund. [Repealed by D.C. Law 19-124].

(a) Each political committee, and each candidate accepting contributions or making expenditures, shall designate, in the registration statement required under § 1-1102.04 or § 1-1102.05, 1 or more national banks located in the District of Columbia as the campaign depository or depositories of that political committee or candidate. Each such committee or candidate shall maintain a checking account or accounts at such depository or depositories and shall deposit any contributions received by the committee or candidate into that account or accounts. No expenditures may be made by such committee or candidate except by check drawn payable to the person to whom the expenditure is being made on that account or accounts, other than petty cash expenditures as provided in subsection (b) of this section.

(b) A political committee or candidate may maintain a petty cash fund out of which may be made expenditures not in excess of \$50 to any person in connection with a single purchase or transaction. A record of petty cash receipts and disbursements shall be kept in accordance with requirements established by the Board and such statements and reports thereof shall be furnished to the Director as it may require. Payments may be made into the petty cash fund only by check drawn on the checking account or accounts maintained at a campaign depository of such political committee or candidate.

(Aug. 14, 1974, 88 Stat. 451, Pub. L. 93-376, title II, § 203; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 3(r), 29 DCR 458; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1413. 1973 Ed., § 1-1133.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 2-101. — For

legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1102.04. Statement of organization of political committees. [Repealed by D.C. Law 19-124].

(a) Each political committee shall file with the Director a statement of organization within 10 days after its organization. Each such committee in existence on August 14, 1974, shall file a statement of organization with the Director at such time as the Director may prescribe.

(b) The statement of organization shall include:

- (1) The name and address of the political committee;
- (2) The names, addresses, and relationships of affiliated or connected organizations;
- (3) The area, scope, or jurisdiction of the political committee;
- (4) The name, address, and position of the custodian of books and accounts;
- (5) The name, address, and position of other principal officers, including officers and members of the finance committee, if any;
- (6) The name, address, office sought, and party affiliation of:
 - (A) Each candidate whom the committee is supporting; and
 - (B) Any other individual, if any, whom the committee is supporting for nomination for election or election, to any public office whatever; or, if the committee is supporting the entire ticket of any party, the name of the party; or, if the committee is supporting or opposing any initiative or referendum, the summary statement and short title thereof, prepared in accordance with § 1-1001.16; or, if the committee is supporting or opposing any recall measure, the name and office of the public official whose recall is sought or opposed in accordance with § 1-1001.17;
- (7) A statement whether the political committee is a continuing one;
- (8) The disposition of residual funds which will be made in the event of dissolution;
- (9) The name and address of the bank or banks designated by the committee as the campaign depository or depositories, together with the title and number of each account and safety deposit box used by that committee at the depository or depositories, and the identification of each individual authorized to make withdrawals or payments out of each such account or box; and
- (10) Such other information as shall be required by the Director.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Director within the 10-day period following the change.

(d) Any political committee which, after having filed 1 or more statements of organization, disbands or determines it will no longer receive contributions or make expenditures during the calendar year shall so notify the Director.

(Aug. 14, 1974, 88 Stat. 451, Pub. L. 93-376, title II, § 204; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; June 7, 1979, D.C. Law 3-1, § 3(b), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 3(b), (r), 29 DCR 458; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1414. 1973 Ed., § 1-1134.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see His-

torical and Statutory Notes following § 1-1101.01.

Legislative history of Law 3-1. — For legislative history of D.C. Law 3-1, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1102.05. Registration statement of candidate; depository information. [Repealed by D.C. Law 19-124].

(a) Each individual shall, within 5 days of becoming a candidate, or within 5 days of the day on which he or she, or any person authorized by him or her to do so, has received a contribution or made an expenditure in connection with his or her campaign or for the purposes of preparing to undertake his or her campaign, file with the Director a registration statement in such form as the Director may prescribe.

(b) In addition, candidates shall provide the Director the name and address of the campaign depository or depositories designated by that candidate, together with the title and number of each account and safety deposit box used by that candidate at the depository or depositories, and the identification of each individual authorized to make withdrawals or payments out of such account or box, and such other information as shall be required by the Director.

(Aug. 14, 1974, 88 Stat. 452, Pub. L. 93-376, title II, § 205; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 3(p), (r), 29 DCR 458; Apr. 12, 2000, D.C. Law 13-91, § 124(a), 47 DCR 520; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1415. 1973 Ed., § 1-1135.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 13-91. — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1102.06. Reports of receipts and expenditures by political committees and candidates. [Repealed by D.C. Law 19-124].

(a) The treasurer of each political committee supporting a candidate, the treasurer of each political committee engaged in obtaining signatures on any initiative, referendum, or recall petition, or engaged in promoting or opposing the ratification of any initiative, referendum, or recall measure placed before the electors of the District of Columbia, and each candidate, required to register under this subchapter, shall file with the Director, and with the applicable principal campaign committee, reports of receipts and expenditures on forms to be prescribed or approved by the Director. Except for the 1st such report which shall be filed on the 21st day after August 14, 1974, such reports shall be filed on the 10th day of March, June, August, October, and December in each year during which there is held an election for the office such candidate is seeking, and on the 8th day next preceding the date on which such election is held, and also by the 31st day of January of each year. In addition such reports shall be filed on the 31st day of July of each year in which there is no such election. Such reports shall be complete as of such date as the Director may prescribe, which shall not be more than 5 days before the date of filing, except that any contribution of \$200 or more received after the closing date prescribed by the Director for the last report required to be filed prior to the election shall be reported within 24 hours after its receipt.

(b) Each report under this section shall disclose:

(1) The amount of cash on hand at the beginning of the reporting period;

(2) The full name and mailing address (including the occupation and the principal place of business, if any) of each person who has made 1 or more contributions to or for such committee or candidate (including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events) within the calendar year in an aggregate amount or value in excess of \$50 or more, together with the amount and date of such contributions;

(3) The total sum of individual contributions made to or for such committee or candidate during the reporting period and not reported under paragraph (2) of this subsection;

(4) The name and address of each political committee or candidate from which the reporting committee or the candidate received, or to which that committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers;

(5) Each loan to or from any person within the calendar year in an aggregate amount or values of \$50 or more, together with the full names and mailing addresses (including the occupation and the principal place of business, if any) of the lender and endorsers, if any, and the date and amount of such loans;

(6) The net amount of proceeds from:

(A) The sale of tickets to each dinner, luncheon, rally, and other fundraising events organized by such committee;

(B) Mass collections made at such events; and

(C) Sales by such committee of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials;

(7) Each contribution, rebate, refund, or other receipt of \$50 or more not otherwise listed under paragraphs (2) through (6) of this subsection;

(8) The total sum of all receipts by or for such committee or candidate during the reporting period;

(9) The full name and mailing address (including the occupation and the principal place of business, if any) of each person to whom expenditures have been made by such committee or on behalf of such committee or candidate within the calendar year in an aggregate amount or value of \$10 or more, the amount, date, and purpose of each such expenditure and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made;

(10) The total sum of expenditures made by such committee or candidate during the calendar year;

(11) The amount and nature of debts and obligations owed by or to the committee, in such form as the Director may prescribe and a continuous reporting of its debts and obligations after the election at such periods as the Director may require until such debts and obligations are extinguished; and

(12) Such other information as may be required by the Director.

(c) The reports to be filed under subsection (a) of this section shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the unchanged amount need be carried forward. If no contributions or expenditures have been accepted or expended during a calendar year, the treasurer of the political committee or candidate shall file a statement to that effect.

(d) In the case of reports filed by a committee or committees on behalf of initiative, referendum, or recall measures under this section, such reports shall be filed on such dates as the Board may by rule prescribe, but in no event, shall more than 4 separate reports be required during the consideration of a particular initiative, referendum, or recall measure by any political committee or committees collecting signatures, or supporting or opposing such measures.

(Aug. 14, 1974, 88 Stat. 452, Pub. L. 93-376, title II, § 206; Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; June 7, 1979, D.C. Law 3-1, § 3(c), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 3(c), (q)-(s), 29 DCR 458; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1416. 1973 Ed., § 1-1136.

Temporary Amendment of Section. — Section 2 of D.C. Law 19-33, in subsec. (a), substituted “in the 7 months preceding the date on which, and in each year during which, an election is held for the office” for “in each year during which there is held an election for the office”.

Section 4(b) of D.C. Law 19-33 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Campaign Finance Reporting Emergency Amendment Act of 2011 (D.C. Act 19-95, July 11, 2011, 58 DCR 5818).

For temporary (90 day) amendment of sec-

tion, see § 2 of Campaign Finance Reporting Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-197, October 18, 2011, 58 DCR 9167).

For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 2-101. — For

legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 3-1. — For legislative history of D.C. Law 3-1, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1102.07. Reports by others than political committees and candidates. [Repealed by D.C. Law 19-124].

Every person (other than a political committee or candidate) who makes contributions or expenditures, other than by contribution to a political committee or candidate, in an aggregate amount of \$50 or more within a calendar year shall file with the Director a statement containing the information required by § 1-1102.06. Statements required by this section shall be filed on the dates on which reports by political committees are filed, but need not be cumulative.

(Aug. 14, 1974, 88 Stat. 453, Pub. L. 93-376, title II, § 207; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1417. 1973 Ed., § 1-1137.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Es-

tablishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1102.08. Formal requirements respecting reports and statements. [Repealed by D.C. Law 19-124].

(a) A report or statement required by this part to be filed by a treasurer of a political committee, a candidate, or by any other person, shall be verified by the oath or affirmation of the person filing such report or statement.

(b) A copy of a report or statement shall be preserved by the person filing it for a period to be designated by the Board in a published regulation.

(c) The Board, shall, by published regulations of general applicability, prescribe the manner in which contributions and expenditures in the nature of debts and other contracts, agreements, and promises to make contributions or expenditures shall be reported. Such regulations shall provide that they be reported in separate schedules. In determining aggregate amounts of contributions and expenditures, amounts reported as provided in such regulations shall not be considered until actual payment is made.

(Aug. 14, 1974, 88 Stat. 454, Pub. L. 93-376, title II, § 208; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1418. 1973 Ed., § 1-1138.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1102.09. Exemption for total expenses under \$500. [Repealed by D.C. Law 19-124].

Except for the provisions of subsections (c) and (d) of § 1-1102.01, and subsection (a) of § 1-1102.05, the provisions of this part shall not apply to any candidate who anticipates spending or spends less than \$500 in any 1 election and who has not designated a principal campaign committee. On the 15th day prior to the date of the election in which such candidate is entered, and on the 30th day after the date of such election, such candidate shall certify to the Director that he or she has not spent more than \$500 in such election.

(Aug. 14, 1974, 88 Stat. 454, Pub. L. 93-376, title II, § 209; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Mar. 16, 1982, D.C. Law 4-88, § 3(q), (r), 29 DCR 458; April 5, 2000, D.C. Law 13-79, § 2(a), 46 DCR 10460; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1419. 1973 Ed., § 1-1139.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 13-79. — Law 13-79, the “Campaign Finance Reform Amendment Act of 1999,” was introduced in Council and assigned Bill No. 13-154, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 5, 1999, and November 2, 1999, respectively. Signed by the Mayor on November 22, 1999, it was assigned Act No. 13-204 and transmitted to both Houses of Congress for its review. D.C. Law 13-79 became effective on April 5, 2000.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1102.10. Identification of campaign literature. [Repealed by D.C. Law 19-124].

All newspaper or magazine advertising, posters, circulars, billboards, handbills, bumper stickers, sample ballots, initiative, referendum, or recall petitions, and other printed matter with reference to or intended for the support or defeat of a candidate or group of candidates for nomination or election to any public office, or for the support or defeat of any initiative, referendum, or recall measure, shall be identified by the words “paid for by” followed by the name and address of the payer or the committee or other person and its treasurer on whose behalf the material appears.

(Aug. 14, 1974, 88 Stat. 454, Pub. L. 93-376, title II, § 210; June 7, 1979, D.C.

Law 3-1, § 3(d), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 3(s), 29 DCR 458; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1420. 1973 Ed., § 1-1140.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 3-1. — For legislative history of D.C. Law 3-1, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1102.11. Candidate's liability for financial obligation incurred by political committee. [Repealed by D.C. Law 19-124].

No provision of this subchapter shall be construed as creating liability on the part of any candidate for any financial obligation incurred by a political committee. For the purposes of this subchapter, and subchapter I of Chapter 10 of this title, actions of an agent acting for a candidate shall be imputed to the candidate: Provided, however, that the actions of such agent may not be imputed to the candidate in the presence of a provision of law requiring a willful and knowing violation of this subchapter or subchapter I of Chapter 10 of this title, unless the agency relationship to engage in such an act is shown by clear and convincing evidence.

(Aug. 14, 1974, 88 Stat. 454, Pub. L. 93-376, title II, § 211; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1421. 1973 Ed., § 1-1141.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Part C

DIRECTOR OF CAMPAIGN FINANCE.

§ 1-1103.01. Office of Director of Campaign Finance established; enforcement of chapter. [Repealed by D.C. Law 19-124].

(a) There is established within the District of Columbia Board of Elections and Ethics the office of Director of the Office of Campaign Finance. After April 5, 2000, the Board of Elections and Ethics shall appoint the Director, who shall serve at the pleasure of the Board. The Director shall be entitled to receive

compensation at the maximum rate for Grade 16 of the District Schedule pursuant to subchapter XI of Chapter 6 of this title. The Director shall be responsible for the administrative operations of the Board pertaining to this subchapter and shall perform other duties as may be delegated or assigned to him or her by regulation or by order of the Board, provided that the Board shall not delegate to the Director the making of regulations regarding elections.

(b) Repealed.

(b-1)(1) The Board may issue, amend, and rescind rules and regulations related to the operation of the Director, absent recommendation of the Director.

(2) The Board shall prepare an annual report of the Director's performance pursuant to his or her functions as prescribed in § 1-1103.03 in addition to those duties the Board may by law assign.

(c) Where the Board, following the presentation by the Director of evidence constituting an apparent violation of this subchapter, makes a finding of an apparent violation of this subchapter, it shall refer such case to the United States Attorney for the District of Columbia for prosecution, and shall make public the fact of such referral and the basis for such finding. In addition, the Board, through its General Counsel, shall initiate, maintain, defend, or appeal any civil action (in the name of the Board) relating to the enforcement of the provisions of this subchapter. The Board may, through its General Counsel, petition the courts of the District of Columbia for declaratory or injunctive relief concerning any action covered by the provisions of this subchapter. The Director shall have no authority concerning the enforcement of provisions of subchapter I of Chapter 10 of this title, and recommendations of criminal or civil, or both, violations under subchapter I of Chapter 10 of this title shall be presented by the General Counsel to the Board in accordance with the rules and regulations of general application adopted by the Board in accordance with the provisions of the District of Columbia Administrative Procedure Act (§ 2-501 et seq.). Upon the direction of the Board, the Director may be called upon to investigate allegations of violations of the elections laws in accord with the provisions of this subsection.

(Aug. 14, 1974, 88 Stat. 454, Pub. L. 93-376, title III, § 301; Jan. 3, 1975, 88 Stat. 2177, Pub. L. 93-635, § 12; Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205(w), 25 DCR 5740; Mar. 16, 1982, D.C. Law 4-88, § 3(d), (p), (r), 29 DCR 458; Aug. 2, 1983, D.C. Law 5-17, § 6, 30 DCR 3196; April 5, 2000, D.C. Law 13-79, § 2(b), 46 DCR 10460; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1431. 1973 Ed., § 1-1151.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974 Temporary Amendment Act of 1995 (D.C. Law 11-22, June 17, 1995, law notification 42 DCR 3236).

For temporary (225 day) amendment of section, see § 2 of District of Columbia Campaign

Finance Reform and Conflict of Interest Temporary Amendment Act of 1995 (D.C. Law 11-51, September 22, 1995, law notification 42 DCR 5510).

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 2-101. — For

legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 5-17. — Law 5-17 was introduced in Council and assigned Bill No. 5-11, which was referred to the Committee on Government Operations. The Bill was adopted on first, amended first and second readings on April 26, 1983, May 10, 1983 and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-34 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-79. — For Law 13-79, see notes following § 1-1102.09.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1103.02. Powers of Director. [Repealed by D.C. Law 19-124].

(a)(1) The Director, under regulations of general applicability approved by the Board, shall have the power:

(A) To require any person to submit in writing such reports and answers to questions as the Director may prescribe relating to the administration and enforcement of this chapter; and such submission shall be made within such reasonable period and under oath or otherwise as the Director may determine;

(A-1) To require any person to submit through an electronic format or medium the reports required in §§ 1-1102.06, 1-1104.03, 1-1105.05, 1-1106.02, and 1-1108.01. The Board shall issue regulations governing the submission of reports, pursuant to this subparagraph, through a standardized electronic format or medium;

(B) To administer oaths;

(C) To require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(D) In any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Director and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under subparagraph (C) of this paragraph;

(E) To pay witnesses the same fees and mileage as are paid in like circumstances in the Superior Court of the District of Columbia;

(F) To accept gifts; and

(G) To institute or conduct, on his or her own motion, an informal hearing on alleged violations of the reporting requirements contained in this chapter. Where the Director, in his or her discretion, determines that such violation has occurred, the Director may issue an order to the offending party or parties to cease and desist such violations within the 5-day period immediately following the issuance of such order. Should the offending party or parties fail to comply with said order, the Director shall present evidence of such

failure to the Board. Following the presentation of said evidence to the Board by the Director, in an adversary proceeding and an open hearing, the Board may refer such matter to the United States Attorney for the District of Columbia in accordance with the provisions of § 1-1103.01(c) or may dismiss the action.

(2) Subpoenas issued under this section shall be issued by the Director upon the approval of the Board.

(b) The Superior Court of the District of Columbia may, upon petition by the Board, in case of refusal to obey a subpoena or order of the Board issued under subsection (a) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the Court may be punished by the Court as a contempt thereof.

(c) All investigations of alleged violations of this chapter shall be made by the Director in his or her discretion, in accordance with procedures of general applicability issued by the Director in accordance with the District of Columbia Administrative Procedure Act (§ 2-501 et seq.). All allegations of violations of this chapter which shall be presented to the Board, in writing, shall be transmitted to the Director without action by the Board. In a reasonable time, the Director shall cause evidence concerning the alleged violation of this chapter to be presented to the Board, if he or she believes that sufficient evidence exists constituting an apparent violation of this chapter. Following the presentation of such evidence to the Board by the Director, in an adversary proceeding and an open hearing, the Board may refer such matter to the United States Attorney for the District of Columbia in accordance with the provisions of § 1-1103.01(c), or may dismiss the action. In no case may the Board refer information concerning an alleged violation of this chapter to the United States Attorney for the District of Columbia without the presentation herein provided by the Director. Should the Director fail to present a matter or advise the Board that insufficient evidence exists to present such a matter, or that an additional period of time is needed to investigate the matter further, within 90 days of its receipt by the Board or the Director, the Board may order the Director to present the matter as herein provided. The provisions of this subsection shall in no manner limit the authority of the United States Attorney for the District of Columbia.

(Aug. 14, 1974, 88 Stat. 455, Pub. L. 93-376, title III, § 302; June 28, 1977, D.C. Law 2-12, § 6(i), 24 DCR 1442; Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 3(e), (r), 29 DCR 458; April 5, 2000, D.C. Law 13-79, § 2(c), 46 DCR 10460; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1432. 1973 Ed., § 1-1152.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 2-12. — Law

2-12 was introduced in Council and assigned Bill No. 2-87, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 22, 1977 and April 5, 1977, respectively. Signed by the Mayor on April 26, 1977, it was assigned Act No. 2-33 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-101. — For

legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 13-79. — For Law 13-79, see notes following § 1-1102.09.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1103.03. Duties of Director. [Repealed by D.C. Law 19-124].

The Director shall:

(1) Develop and furnish prescribed forms, materials, and electronic formats or mediums, including electronic or digital signatures, for the making of the reports and statements required to be filed with him or her pursuant to this chapter;

(2) Develop a filing, coding, and cross-indexing system consonant with the purposes of this subchapter;

(3) Make the reports and statements filed with him or her available for public inspection and copying, commencing as soon as practicable but not later than the end of the 2nd day following the day during which it was received, and to permit and facilitate copying of any such report or statement by hand and by duplicating machine, as requested by any person, at reasonable cost to such person, except any information copied from such reports and statements shall not be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose;

(4) Preserve such reports and statements for a period of 10 years from date of receipt;

(5) Compile and maintain a current list of all statements or parts of statements on file pertaining to each candidate;

(6) Prepare and publish such other reports as he or she may deem appropriate;

(7) Assure dissemination of statistics, summaries, and reports prepared under this subchapter, including a biennial report summarizing the receipts and expenditures of candidates for public office in the prior 2-year period, and the receipts and expenditures of political committees during the prior 2-year period. The Director shall make available to the Mayor, Council, and the general public the first report by January 31, 2001, and shall present the summary report on the same date every 2 years thereafter. The report shall describe the receipts and expenditures of candidates for Mayor, the Chairman and members of the Council, the President and members of the Board of Education, shadow Senator, and shadow Representative, but shall exclude candidates for Advisory Neighborhood Commissioner. The report shall provide, at a minimum, the following data, as well as other information that the Director deems appropriate:

(A) A summary of each candidate's receipts, in dollar amount and percentage terms, by donor categories that the Director deems appropriate, such as the candidate himself or herself, individuals, political party committees, other political committees, corporations, partnerships, and labor organizations;

(B) A summary of each candidate's receipts, in dollar amount and percentage terms, by the size of the donation, including donations of \$500 or more; donations of \$250 or more but less than \$500; donations of \$100 or more but less than \$250; and donations of less than \$100;

(C) The total amount of a candidate's receipts and expenditures for primary and general elections, respectively, when applicable;

(D) A summary of each candidate's expenditures, in dollar amount and percentage terms, by operating expenditures, transfers to other authorized committees, loan repayments, and refunds of contributions; and

(E) A summary of the receipts and expenditures of political committees, using such categories deemed appropriate by the Director.

(8) Make from time to time audits and field investigations with respect to reports and statements filed under the provisions of this subchapter, and with respect to alleged failures to file any report or statement required under the provisions of this part; and

(9) Perform such other duties as the Board may require.

(Aug. 14, 1974, 88 Stat. 456, Pub. L. 93-376, title III, § 303; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; Mar. 16, 1982, D.C. Law 4-88, § 3(p)-(r), 29 DCR 458; April 5, 2000, D.C. Law 13-79, § 2(d), 46 DCR 10460; Oct. 4, 2000, D.C. Law 13-163, § 2(a), 47 DCR 5812; Mar. 3, 2010, D.C. Law 18-111, § 1061, 57 DCR 181; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1433. 1973 Ed., § 1-1153.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974 Temporary Amendment Act of 1995 (D.C. Law 11-22, June 17, 1995, law notification 42 DCR 3236).

Emergency legislation. — For temporary (90 day) amendment of section, see § 1061 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 1061 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see His-

torical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 13-79. — For Law 13-79, see notes following § 1-1102.09.

Legislative history of Law 13-163. — Law 13-163, the "Campaign Finance Disclosure and Enforcement Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-283, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 3, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 22, 2000, it was assigned Act No. 13-362 and transmitted to both Houses of Congress for its review. D.C. Law 13-163 became effective on October 4, 2000.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Short title. — Short title: Section 1060 of D.C. Law 18-111 provided that subtitle G of title I of the act may be cited as the "Campaign Finance Electronic Signature Amendment Act of 2009".

§ 1-1103.04. Assistance of Comptroller General. [Repealed by D.C. Law 19-124].

The Board and Director may, in the performance of its functions under this subchapter, request the assistance of the Comptroller General of the United States, including such investigations and audits as the Board and Director may determine necessary, and the Comptroller General shall provide such assistance with or without reimbursement, as the Board and Director and the Comptroller General shall agree.

(Aug. 14, 1974, 88 Stat. 456, Pub. L. 93-376, title III, § 304; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1434.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform

Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1103.05. District of Columbia Board of Elections and Ethics created; penalties; advisory opinions. [Repealed by D.C. Law 19-124].

(a) On and after August 14, 1974, the Board of Elections of the District of Columbia established under subchapter I of Chapter 10 of this title, shall be known as the “District of Columbia Board of Elections and Ethics” and shall have the powers, duties, and functions as provided in such subchapter, in any other law in effect on the date immediately preceding August 14, 1974, and in this chapter. Any reference in any law or regulation to the Board of Elections for the District of Columbia or the District of Columbia Board of Elections shall, on and after August 14, 1974, be held and considered to refer to the District of Columbia Board of Elections and Ethics.

(b)(1) Any person who violates any provision of this subchapter or subchapter I of Chapter 10 of this title may be assessed a civil penalty by the District of Columbia Board of Elections and Ethics under paragraph (2) of this subsection of not more than \$200, or three times the amount of an unlawful contribution, expenditure, gift, honorarium, or receipt of outside income, whichever is greater, for each such violation. Each occurrence of a violation of this subchapter and each day of noncompliance with a disclosure requirement of this subchapter or an order of the Board shall constitute a separate offense.

(2) A civil penalty shall be assessed by the Board by order only after the person charged with a violation has been given an opportunity for a hearing, and the Board has determined, by decision incorporating its findings of facts therein, that a violation did occur, and the amount of the penalty. Any hearing under this section shall be of record and shall be held in accordance with the District of Columbia Administrative Procedure Act (§ 2-501 et seq.).

(3) Notwithstanding the provisions of paragraph (2) of this subsection, the Board may issue a schedule of fines for violations of this subchapter, which may be imposed ministerially by the Director. A civil penalty imposed under

the authority of this paragraph may be reviewed by the Board in accordance with the provisions of paragraph (2) of this subsection. The aggregate set of penalties imposed under the authority of this paragraph may not exceed \$2,000.

(4) If the person against whom a civil penalty is assessed fails to pay the penalty, the Board shall file a petition for enforcement of its order assessing the penalty in the Superior Court of the District of Columbia. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall be forthwith sent by registered or certified mail to the respondent and his attorney of record, and if the respondent is a political committee, to the chairman thereof, and thereupon the Board shall certify and file in such Court the record upon which such order sought to be enforced was issued. The Court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and the decision of the Board or it may remand the proceedings to the Board for such further action as it may direct. The Court may determine de novo all issues of law but the Board's findings of fact, if supported by substantial evidence, shall be conclusive.

(c)(1) Upon application made by any individual holding public office, any candidate, any person who may be a potential registrant under this subchapter, or any political committee, the Board shall provide within a reasonable period of time an advisory opinion with respect to any specific transaction or activity inquired of, as to whether such transaction or activity would constitute a violation of any provision of this subchapter or of any provision of subchapter I of Chapter 10 of this title over which the Board has primary jurisdiction. The Board shall publish a concise statement of each request for an advisory opinion, without identifying the person seeking such opinion, in the District of Columbia Register within 20 days of its receipt by the Board. Comments upon such requested opinions shall be received by the Board for a period of at least 15 days following publication in the District of Columbia Register. The Board may waive the advance notice and public comment provisions, following a finding that the issuance of such advisory opinion constitutes an emergency necessary for the immediate preservation of the public peace, health, safety, welfare, or morals.

(2) Advisory opinions shall be published in the District of Columbia Register within 30 days of their issuance, provided, that the identity of any person requesting an advisory opinion shall not be disclosed in the District of Columbia Register without their prior consent in writing. When issued according to rules of the Board, an advisory opinion shall be deemed to be an order of the Board, reviewable in the Superior Court of the District of Columbia by any interested person adversely affected thereby.

(Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306; Jan. 3, 1975, 88 Stat. 2178, Pub. L. 93-635, § 14(a); Apr. 23, 1977, D.C. Law 1-126, title III, § 302(a), 24 DCR 2372; Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 3(f), (r), 29 DCR 458; Oct. 4, 2000, D.C. Law 13-163, § 2(b), 47 DCR 5812; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1435. 1973 Ed., § 1-1156.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974 Temporary Amendment Act of 1995 (D.C. Law 11-22, June 17, 1995, law notification 42 DCR 3236).

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 13-163. — For Law 13-163, see notes following § 1-1103.03.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Part D

CONSTITUENT SERVICES.

§ 1-1104.01. General limitations. [Repealed].

Repealed.

(Aug. 14, 1974, 88 Stat. 459, Pub. L. 93-376, title IV, § 401; Sept. 23, 1975, D.C. Law 1-16, § 2, 22 DCR 1987; Oct. 10, 1975, D.C. Law 1-21, § 7(a), 22 DCR 2069; Oct. 30, 1975, D.C. Law 1-27, § 3(a), (b), 22 DCR 2471; Sept. 2, 1976, D.C. Law 1-79, title VIII, § 802, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 104, title IV, § 402, 24 DCR 2372; Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257; June 7, 1979, D.C. Law 3-1, § 3(e), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 3(g), (r), (s), 29 DCR 458; Sept. 26, 1984, D.C. Law 5-111, § 2(a), 31 DCR 3952; June 13, 1996, D.C. Law 11-144, § 2, 43 DCR 2174.)

Prior Codifications. — 1981 Ed., § 1-1441. 1973 Ed., § 1-1161.

Legislative history of Law 11-144. — Law 11-144, the "Contribution Limitation Initiative Amendment Act of 1996," was introduced in Council and Assigned Bill No. 11-427, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 5, 1996, and April 2, 1996, respectively. Signed by the Mayor on April 18, 1996, it was assigned Act No. 11-261

and transmitted to both Houses of Congress for its review. D.C. Law 11-144 became effective on June 13, 1996.

Editor's notes. — Applicability of chapter to Law 11-144: Section 4 of D.C. Law 11-144, the Contribution Limitation Initiative Amendment Act of 1996, provided that D.C. Code § 1-1101.01 et seq. shall apply to the act. D.C. Law 11-144 repeals § 1-1104.01 and amends §§ 1-1131.01, 1-1131.03, and 1-1104.02.

§ 1-1104.02. "Person" defined. [Repealed].

Repealed.

(June 7, 1979, D.C. Law 3-1, § 4, 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, §§ 3(s), 7, 29 DCR 458; Mar. 25, 2009, D.C. Law 17-353, § 307, 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 1-1442. 1973 Ed., § 1-1161.1.

Legislative history of Law 3-1. — For

legislative history of D.C. Law 3-1, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For

legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 1-129.05.

Editor's notes. — Applicability of chapter to Law 11-144: Section 4 of D.C. Law 11-144, the

Contribution Limitation Initiative Amendment Act of 1996, provided that D.C. Code § 1-1101.01 et seq. shall apply to the act. D.C. Law 11-144 repeals § 1-1104.01 and amends §§ 1-1131.01, 1-1131.03, and 1-1104.02.

§ 1-1104.03. Constituent services. [Repealed by D.C. Law 19-124].

(a) The Mayor, the Chairman of the Council, and each member of the Council may establish citizen-service programs within the District of Columbia. The Mayor, the Chairman of the Council, and each member of the Council may finance the operation of such programs with contributions from persons, provided, that contributions received by the Mayor, the Chairman of the Council, and each member of the Council do not exceed an aggregate amount of \$80,000 in any 1 calendar year. The Mayor, the Chairman of the Council, and each member of the Council may expend a maximum of \$80,000 in any 1 calendar year for such programs. No person shall make any contribution which, and neither the Mayor, the Chairman of the Council, nor any member of the Council shall receive any contribution from any person which, when aggregated with all other contributions received from such person, exceed \$500 per calendar year, provided, that such \$500 limitation shall not apply to contributions made by the Mayor, the Chairman of the Council, or any member of the Council for the purpose of funding his or her own citizen-service programs within the District of Columbia. The Mayor, the Chairman of the Council, and each member of the Council shall file a quarterly report of all contributions received and monies expended in accordance with this subsection with the Director of Campaign Finance. No campaign activities shall be conducted nor shall campaign literature or paraphernalia be distributed as part of citizen-service programs conducted pursuant to this subsection.

(a-1) Upon the request of any member of the Council, the Mayor shall provide the member with suitable office space in a publicly owned building for the operation of a citizen-service program office located in the ward represented by the member. Each at-large member of the Council shall be offered citizen-service office space located in a ward of the member's choice. Members shall be provided with space of approximately equivalent square footage, and in similar proximity to commercial corridors and public transportation where practicable. The space provided shall also be easily accessible by persons with disabilities or persons who are elderly. Any space so provided shall not be counted as an in-kind contribution. Furnishings, equipment, telephone service, and supplies to this office space shall be provided from funds other than appropriated funds of the District of Columbia government.

(b) Repealed.

(c) Contributions of personal property from persons to the Mayor or to any members of the Council or contributions of the use of personal property shall be valued, for purposes of this section, at the fair market value of such property not to exceed \$1,000 per calendar year at the time of the contribution. Contributions made or received pursuant to this section shall not be applied against the limitation on political contributions established by § 1-1131.01.

(d) All contributions and expenditures made by persons to the Mayor, Chairman of the Council, and each member of the Council as provided by subsection (a) of this section, and all expenditures made by the Mayor, Chairman of the Council, and each member of the Council as provided by subsection (a) of this section, shall be reported to the Director of Campaign Finance quarterly on forms which the Director shall prescribe. All of the record keeping requirements of this subchapter shall apply to contributions and expenditures made under this section. At the time a program of services as authorized in subsection (a) of this section is terminated, any excess funds shall be used to retire the debts of the program, or shall be donated to an organization operating in the District of Columbia as a not-for-profit organization within the meaning of § 501(c) of the Internal Revenue Code of 1954, as amended.

(e) Activities authorized by this section may be carried on at any location in the District of Columbia, provided that employees of the District of Columbia government do not engage in citizen-service fundraising activities during normal business hours.

(Aug. 14, 1974, 88 Stat. 461, Pub. L. 93-376, title IV, § 402; Oct. 10, 1975, D.C. Law 1-21, § 7(b), 22 DCR 2069; Oct. 30, 1975, D.C. Law 1-27, § 3(c), 22 DCR 2471; Sept. 2, 1976, D.C. Law 1-79, title VII, § 702, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 102(d), 24 DCR 2372; Mar. 16, 1982, D.C. Law 4-88, § 3(h), (r), 29 DCR 458; Jan. 28, 1988, D.C. Law 7-66, § 2, 34 DCR 7439; Apr. 12, 2000, D.C. Law 13-91, § 124(b), 47 DCR 520; Apr. 24, 2007, D.C. Law 16-305, § 7, 53 DCR 6198; Sept. 23, 2009, D.C. Law 18-52, § 2, 56 DCR 5491; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1443. 1973 Ed., § 1-1162.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-27. — Law 1-27 was introduced in Council and assigned Bill No. 1-90, which was referred to the Committee on Advisory Neighborhood Councils. The Bill was adopted on first and second readings on June 17, 1975 and July 1, 1975, respectively. Signed by the Mayor on August 4, 1975, it was assigned Act No. 1-39 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 7-66. — Law

7-66 was introduced in Council and assigned Bill No. 7-153, which was referred to the Committee on Human Services and reassigned to the Committee on Government Operations. The Bill was adopted on first and second readings on October 13, 1987 and October 27, 1987, respectively. Signed by the Mayor on November 5, 1987, it was assigned Act No. 7-99 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-1102.05.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 1-307.02.

Legislative history of Law 18-52. — Law 18-52, the "Citizen-Service Programs Amendment Act of 2009", was introduced in Council and assigned Bill No. 18-105, which was referred to the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on June 2, 2009, and June 16, 2008, respectively. Enacted without signature by the Mayor on June 26, 2009, it was assigned Act No. 18-127 and transmitted to both Houses of Congress for its review. D.C. Law 18-52 became effective on September 23, 2009.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Part E

LOBBYING.

§ 1-1105.01. Definitions. [Repealed by D.C. Law 19-124].

As used in this part, unless the context requires otherwise:

(1) The term “administrative decision” means any activity directly related to action by an executive agency to issue a Mayor’s order, to cause to be undertaken a rule-making proceeding (which does not include a formal public hearing) under the District of Columbia Administrative Procedure Act (§ 2-501 et seq.), or to propose legislation or make nominations to the Council, the President, or the Congress.

(2) The term “compensation” means any money or an exchange of value received, regardless of its form, by a person acting as a lobbyist.

(3) The term “executive agency” means a department, agency, or office in the executive branch of the District of Columbia government under the direct administrative control of the Mayor; the Board of Education or any of its constituent elements; the University of the District of Columbia or any of its constituent elements; the Board of Elections and Ethics; and any District of Columbia professional licensing and examining board under the administrative control of the executive branch.

(4) The term “expenditure” means any money or an exchange of value regardless of its form.

(5) The term “gift” means a payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, unless consideration of equal or greater value is received, for the purpose of influencing the actions of a public official in making or influencing the making of an administrative decision or legislative action; and shall not include a political contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the person’s household as defined by § 1-1106.01(i)(4).

(6) The term “legislative action” includes any activity conducted by an official in the legislative branch in the normal course of carrying out his or her duties as such an official, and relating to the introduction, passage, or defeat of any legislation in the Council.

(7)(A) The term “lobbying” means communicating directly with any official in the legislative or executive branch of the District of Columbia government with the purpose of influencing any legislative action or an administrative decision.

(B) As used in this part, the term “lobbying” shall not include:

(i) The appearance or presentation of written testimony by a person in his or her own behalf, or representation by an attorney on behalf of any such person in a rule-making (which includes a formal public hearing), rate-making, or adjudicatory hearing before an executive agency or the Tax Assessor;

(ii) Information supplied in response to written inquiries by an executive agency or the Council of the District of Columbia or any public official;

(iii) Inquiries concerning only the status of specific actions by an executive agency or the Council of the District of Columbia;

(iv) Testimony given before a committee of the Council of the District of Columbia or before the Council of the District of Columbia, during which a public record is made of such proceedings or testimony submitted for inclusion in such a public record;

(v) A communication made through the instrumentality of a newspaper, television, or radio of general circulation or a publication whose primary audience is the organization's membership; and

(vi) Communications by a bona fide political party as defined in § 1-1101.01(10).

(8) The term "lobbyist" means any person who engages in lobbying. Public officials communicating directly or soliciting others to communicate with other public officials shall not be deemed lobbyists for the purposes of this subchapter, so long as such public officials do not receive compensation in addition to their salary for such communications or solicitations and make such communications and solicitations in their official capacity.

(9) The term "official in the executive branch" means the Mayor, any officer or employee in the Executive Service, persons employed under the authority of §§ 1-609.01 through 1-609.03 (except § 1-609.03(a)(3)) paid at a rate of GS-13 or above in the General Schedule or equivalent compensation under the provisions of subchapter XI of Chapter 6 of this title or designated in § 1-609.08 (except paragraphs (9) and (10) [(10) repealed] of that section) or members of boards and commissions designated in § 1-1106.02(a).

(10) The term "official in the legislative branch" means any candidate for Chairman or member of the Council in a primary, special, or general election, the Chairman or Chairman-elect or any member or member-elect of the Council, officers and employees of the Council appointed under the authority of §§ 1-609.01 through 1-609.03 or designated in § 1-609.08.

(11) The term "public official" means any official in the executive, judicial, or legislative branch of the District of Columbia government.

(12) The term "registrant" means a person who is required to register as a lobbyist under the provisions of § 1-1105.02.

(Aug. 14, 1974, 88 Stat. 462, Pub. L. 93-376, title V, § 501; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 302(b)-(i), title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205(w), 25 DCR 5740; Apr. 23, 1980, D.C. Law 3-58, § 2(a), 27 DCR 963; Mar. 16, 1982, D.C. Law 4-88, § 3(i), 29 DCR 458; Apr. 12, 2000, D.C. Law 13-91, § 124(c), 47 DCR 520; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1451. 1973 Ed., § 1-1171.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-1103.01.

Legislative history of Law 3-58. — Law

3-58 was introduced in Council and assigned Bill No. 3-158, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on January 22, 1980 and February 5, 1980, respectively. Signed by the Mayor on February 26, 1980, it was assigned Act No. 3-154 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-1102.05.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1105.02. Persons required to register. [Repealed by D.C. Law 19-124].

(a) Except as provided in § 1-1105.03, a person shall register with the Director pursuant to § 1-1105.04 and pay the required registration fee if the person receives compensation or expends funds in an amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying. A person who receives compensation from more than 1 source shall register under this section if such person receives an aggregate amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying. Failure to register as required by this section shall result in a civil penalty of treble the registration fee amount.

(b)(1) Except as provided in paragraph (2) of this subsection, the registration fee for lobbyists shall be \$250.

(2) The registration fee for lobbyists who lobby solely for nonprofit organizations shall be \$50.

(c)(1) There is established as a nonlapsing fund the Lobbyist Administration and Enforcement Fund ("Fund"), which shall be administered by the Office of Campaign Finance. The funds in the Fund shall be used by the Office of Campaign Finance solely for the purpose of administering and enforcing this part.

(2) All fees collected under subsection (b) of this section by the Office of Campaign Finance shall be deposited into the Fund. All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in paragraph (1) of this subsection without regard to fiscal year limitation, subject to authorization by Congress.

(Aug. 14, 1974, 88 Stat. 462, Pub. L. 93-376, title V, § 502; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 3(r), 29 DCR 458; Mar. 3, 2010, D.C. Law 18-111, § 1271, 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 1162, 57 DCR 6242; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1452. 1973 Ed., § 1-1172.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 1802 of the Fiscal Year 2010 Balanced Budget Support Temporary Act of 2010 (D.C. Law 18-222, September 24, 2010, law notification 57 DCR 9859).

Emergency legislation. — For temporary (90 day) amendment of section, see § 1271 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 1271 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 1802 of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) amendment of section, see § 1802 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

For temporary (90 day) amendment of section, see § 1162 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Short title. — Short title: Section 1270 of D.C. Law 18-111 provided that subtitle BB of title I of the act may be cited as the “Campaign Finance Reform and Conflict of Interest Amendment Act of 2009”.

Short title: Section 1161 of D.C. Law 18-223 provided that subtitle Q of title I of the act may be cited as the “Lobbyist Administration and Enforcement Fund Establishment Amendment Act of 2010”.

§ 1-1105.03. Exceptions. [Repealed by D.C. Law 19-124].

(a) A person need not register with the Director pursuant to § 1-1105.04 if such person is:

(1) A public official, or an employee of the United States acting in his or her official capacity;

(2) A publisher or working member of the press, radio, or television who in the ordinary course of business disseminates news or editorial comment to the general public;

(3) Any candidate, member, or member-elect of an Advisory Neighborhood Commission; or

(4) Any entity specified in § 47-1802.01(4), no activities of which include lobbying, the result of which shall inure to the financial gain or benefit of the entity.

(b) Any person who is exempt from registration under any provision of this section, except a person exempt from registration under the provisions of paragraph (1) of subsection (a) of this section, may be a registrant for other purposes under this subchapter: Provided, however, that no such activity engaged in by such person shall constitute a conflict of interest under the provisions of Part F of this subchapter. Registrants have no obligation to report activities in furtherance of exempt activities under this section in activity reports required under § 1-1105.05.

(Aug. 14, 1974, 88 Stat. 462, Pub. L. 93-376, title V, § 503; Sept. 2, 1976, D.C.

Law 1-79, title III, § 302, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 302(j), title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 3(j), 29 DCR 458; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1453. 1973 Ed., § 1-1173.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 1-126. — For

legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1105.04. Registration form. [Repealed by D.C. Law 19-124].

(a) Each registrant shall file a registration form with the Director, signed under oath, on or before January 15th of each year, or not later than 15 days after becoming a lobbyist (and on or before January 15th of each year thereafter). If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form. A registrant must file a separate registration form for each person from whom he or she receives compensation.

(b) Such registration shall be on a form prescribed by the Director and shall include: (1) The registrant's name, permanent address, and temporary address while lobbying; (2) the name and address of each person who will lobby on the registrant's behalf; (3) the name, address, and nature of the business of any person who compensates the registrant and the terms of the compensation; and (4) the identification, by formal designation if known, of matters on which the registrant expects to lobby. The Director shall publish on or before February 15th and on or before August 15th of each year a summary of all information required to be submitted under this subsection in the District of Columbia Register.

(Aug. 14, 1974, 88 Stat. 463, Pub. L. 93-376, title V, § 504; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 302(k), title IV, § 402, 24 DCR 2372; Mar. 16, 1982, D.C. Law 4-88, § 3(r), (s), 29 DCR 458; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1454. 1973 Ed., § 1-1174.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-79. — For

legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1105.05. Activity reports. [Repealed by D.C. Law 19-124].

(a) Each registrant shall file with the Director between the 1st and 10th day of July and January of each year a report signed under oath concerning his or her lobbying activities during the previous 6-month period. If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form. A registrant must file a separate activity report for each person from whom he or she receives compensation. Such reports shall be public documents and shall be on a form prescribed by the Director and shall include the following:

(1) A complete and current statement of the information required to be supplied pursuant to § 1-1105.04;

(2)(A) Total expenditures on lobbying broken down into the following categories:

- (i) Office expenses;
- (ii) Advertising and publications;
- (iii) Compensation to others;
- (iv) Personal sustenance, lodging, and travel, if compensated;
- (v) Other expenses;

(B) Each expenditure of \$50 or more shall also be itemized by the date, name, and address of the recipient, and the amount and purpose of such expenditure;

(3) Each political expenditure, loan, gift, honorarium, or contribution of \$50 or more made by the registrant or anyone acting on behalf of the registrant to benefit an official in the legislative or executive branch, a member of his or her staff or household or a campaign or testimonial committee established for the benefit of the official, and shall be itemized by date, beneficiary, amount, and circumstances of the transaction; including the aggregate of all such expenditures that are less than \$50;

(4) Each official in the executive or legislative branch and any member of such official's personal staff who receives compensation in any manner by the registrant shall be identified by name and nature of his or her employment with the registrant;

(5) Each official in the executive or legislative branch with whom the registrant has had written or oral communications (during the reporting period) related to lobbying activities conducted by the registrant shall also be included in such report, identifying the official with whom the communication was made; and

(6) Each person whom the registrant has given compensation to lobby on his or her behalf shall also be listed in such report.

(b) Each registrant shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to substantiate the activity reports required to be made pursuant to this section for 5 years from the date of filing of the report containing such items. These materials shall be made available for inspection upon requests by the Director after reasonable notice.

(c) Each registrant who does not file a report required by this section for a given period is presumed not to be receiving or expending funds which are required to be reported under this subchapter.

(Aug. 14, 1974, 88 Stat. 463, Pub. L. 93-376, title V, § 505; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 302 (l)-(p), title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 3(k), (q), (r), 29 DCR 458; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1455. 1973 Ed., § 1-1175.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 1-126. — For

legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1105.06. Prohibited activities. [Repealed by D.C. Law 19-124].

(a) No registrant or anyone acting on behalf of a registrant shall offer, give, or cause to be given a gift to an official in the legislative or executive branch or a member of his or her staff, that exceeds \$100 in value in the aggregate in any calendar year. This section shall not be construed to restrict in any manner contributions authorized in §§ 1-1131.01 through 1-1131.02 and 1-1104.03.

(b) No official in the legislative or executive branch or a member of his or her staff shall solicit or accept anything of value in violation of subsection (a) of this section.

(c) No person shall knowingly or willfully make any false or misleading statement or misrepresentation of the facts (relating to pending administrative decisions or legislative actions) to any official in the legislative or executive branch, or knowing a document to contain a false statement (relating to pending administrative decisions or legislative actions), cause a copy of such document to be transmitted to an official in the legislative or executive branch without notifying such official in writing of the truth.

(d) No information copied from registration forms and activity reports required by this subchapter or from lists compiled from such forms and reports shall be sold or utilized by any person for the purpose of soliciting campaign contributions or selling tickets to a testimonial or similar fund raising affair or for any commercial purpose.

(e) No public official shall be employed as a lobbyist while acting as a public official, except as provided in § 1-1105.03.

(Aug. 14, 1974, 88 Stat. 463, Pub. L. 93-376, title V, § 506; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 302(q), title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 3, 25

DCR 257; Apr. 12, 2000, D.C. Law 13-91, § 124(d), 47 DCR 520; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1456. 1973 Ed., § 1-1176.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 1-126. — For

legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-1102.05.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1105.07. Penalties; prohibition from serving as lobbyist; citizen suits. [Repealed by D.C. Law 19-124].

(a) Any person who willfully and knowingly violates any of the provisions of this part, except as provided in subsection (c) of this section, shall be fined not more than \$5,000, or imprisoned for not more than 12 months, or both.

(b) In addition to the penalties provided for in subsection (a) of this section, any person convicted of the misdemeanor specified therein may be prohibited, for a period of 3 years from the date of such conviction, from serving as a lobbyist.

(c) Any person who files a report or registration form required under this part, in other than a timely manner, shall be assessed a civil penalty of \$10 per day up to 30 days (excluding Saturdays, Sundays, and holidays) the report or registration form is late. The Board may waive the penalty imposed under this subsection for good cause shown.

(d) Should any provision of this part not be enforced by the Board, a citizen of the District of Columbia may bring suit in the nature of mandamus in the Superior Court of the District of Columbia, directing the Board, to enforce the provisions of this part. Reasonable attorneys fees may be awarded to the citizen against the District should he or she prevail in this action, or if it is settled in substantial conformity with the relief sought in the petition, prior to order by the Court.

(Aug. 14, 1974, 88 Stat. 464, Pub. L. 93-376, title V, § 507; Sept. 2, 1976, D.C. Law 1-79, title III, § 302, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title III, § 302(r), (s), title IV, § 402, 24 DCR 2372; Mar. 16, 1982, D.C. Law 4-88, § 3(r), 29 DCR 458; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1457. 1973 Ed., § 1-1177.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For

legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Part F

CONFLICT OF INTEREST AND DISCLOSURE.

§ 1-1106.01. Conflict of interest. [Repealed by D.C. Law 19-124].

(a) The Congress declares that elective and public office is a public trust, and any effort to realize personal gain through official conduct is a violation of that trust.

(b) No public official shall use his or her official position or office to obtain financial gain for himself or herself, any member of his or her household, or any business with which he or she or a member of his or her household is associated, other than that compensation provided by law for said public official. This subsection shall not affect a vote by a public official: (1) On any matter which affects a class of persons (such a class shall include no less than 50 persons) of which such public official is a member if the financial gain to be realized is de minimis; (2) on any matter relating to such public official's compensation as authorized by law; or (3) regarding any elections law. If an action is taken by any department, agency, board, or commission of the District of Columbia, except by the Council of the District of Columbia, in violation of this section, such action may be set aside and declared void and of no effect, upon a proper order of a court of competent jurisdiction.

(c) No person shall offer or give to a public official or a member of a public official's household, and no public official shall solicit or receive anything of value, including a gift, favor, service, loan gratuity, discount, hospitality, political contribution, or promise of future employment, based on any understanding that such public official's official actions or judgment or vote would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the public official in the discharge of his or her duties, or as a reward, except for political contributions publicly reported pursuant to § 1-1102.06 and transactions made in the ordinary course of business of the person offering or giving the thing of value.

(d) No person shall offer or pay to a public official, and no public official shall solicit or receive any money, in addition to that lawfully received by the public official in his or her official capacity, for advice or assistance given in the course of the public official's employment or relating to his or her employment.

(e) No public official shall use or disclose confidential information given in the course of or by reason of his or her official position or activities in any way that could result in financial gain for himself or herself or for any other person.

(f) No member or employee of the Council of the District of Columbia or Board of Education of the District of Columbia shall accept assignment to serve on a committee the jurisdiction of which consists of matters (other than of a de minimis nature) in which he or she or a member of his or her family or a business with which he or she is associated, has financial interest.

(g) Any public official who, in the discharge of his or her official duties, would be required to take an action or make a decision that would affect directly or indirectly his or her financial interests or those of a member of his or her household, or a business with which he or she is associated, or must take an official action on a matter as to which he or she has a conflict situation created by a personal, family, or client interest, shall:

(1) Prepare a written statement describing the matter requiring action or decision, and the nature of his or her potential conflict of interest with respect to such action or decision;

(2) Cause copies of such statement to be delivered to the District of Columbia Board of Elections and Ethics (referred to in this part as the "Board"), and to his or her immediate superior, if any;

(3) If he or she is a member of the Council of the District of Columbia or member of the Board of Education of the District of Columbia, or employee of either, deliver a copy of such statement to the Chairman thereof, who shall cause such statement to be printed in the record of proceedings, and, upon request of said member or employee, shall excuse the member from votes, deliberations, and other action on the matter on which a potential conflict exists;

(4) If he or she is not the Mayor or a member of the Council of the District of Columbia, his or her superior, if any, shall assign the matter to another employee who does not have a potential conflict of interest, or, if he or she has no immediate superior, except the Mayor, he or she shall take such steps as the Board prescribes through rules and regulations to remove himself or herself from influence over actions and decisions on the matter on which potential conflict exists; and

(5) During a period when a charge of conflict of interest is under investigation by the Board, if he or she is not the Mayor or a member of the Council of the District of Columbia or a member of the Board of Education, his or her superior, except the Mayor, if any, shall have the arbitrary power to assign the matter to another employee who does not have a potential conflict of interest, or if he or she has no immediate superior, he or she shall take such steps as the Board shall prescribe through rules and regulations to remove himself or herself from influence over actions and decisions on the matter on which there is a conflict of interest.

(h) Neither the Mayor nor any member of the Council of the District of Columbia may represent another person before any regulatory agency or court of the District of Columbia while serving in such office. The preceding sentence does not apply to an appearance by such an official before any such agency or court in his or her official capacity or to the appearance by a member of the Council (not the Chairman) licensed to practice law in the District of Columbia, before any court or non-District of Columbia regulatory agency in any matter which does not affect his or her official position.

(h-1)(1) No member of a board or commission shall be eligible for appointment by the members of that board or commission to any paid office or position under the supervision of that board or commission.

(2) No former member of a board or commission shall be eligible for

appointment to any paid office or position under the supervision of the board or commission on which he or she served, unless:

(A) At least 45 days have passed since the date of termination of his or her service as a member of the board or commission; and

(B) He or she has followed the same employment application requirements required of other applicants for the paid office or position.

(i) As used in this section, the term:

(1) “Public official” means any person required to file a financial statement under § 1-1106.02.

(2) “Business” means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock, trust, and any legal entity through which business is conducted for profit.

(3) “Business with which he or she is associated” means any business of which the person or member of his or her household is a director, officer, owner, employee, or holder of stock worth \$1,000 or more at fair market value, and any business which is a client of that person.

(4) “Household” means the public official and his or her immediate family.

(5) “Immediate family” means the public official’s spouse and any parent, brother, or sister, or child of the public official, and the spouse or domestic partner of any such parent, brother, sister, or child.

(Aug. 14, 1974, 88 Stat. 465, Pub. L. 93-376, title VI, § 601; Jan. 3, 1975, 88 Stat. 2178, Pub. L. 93-635, § 14(b); Sept. 2, 1976, D.C. Law 1-79, title II, § 202, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 102(b), title IV, § 402, 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205 (w), 25 DCR 5740; Apr. 23, 1980, D.C. Law 3-58, § 2(b), 27 DCR 963; Mar. 16, 1982, D.C. Law 4-88, § 3(p), 29 DCR 458; Oct. 21, 2000, D.C. Law 13-184, § 2, 47 DCR 7066; Sept. 12, 2008, D.C. Law 17-231, § 6(b), 55 DCR 6758; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1461. 1973 Ed., § 1-1181.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the Conflict of Interest Temporary Amendment Act of 2007 (D.C. Law 17-43, November 24, 2007, law notification 55 DCR 2).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Conflict of Interest Emergency Amendment Act of 2007 (D.C. Act 17-73, July 26, 2007, 54 DCR 7547).

For temporary (90 day) amendment of section, see § 2 of Conflict of Interest Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-154, October 18, 2007, 54 DCR 10913).

For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-1103.01.

Legislative history of Law 3-58. — For legislative history of D.C. Law 3-58, see Historical and Statutory Notes following § 1-1105.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 13-184. — Law 13-184, the “Conflict of Interest Amendment

Act of 2000," was introduced in Council and assigned Bill No. 13-485, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 26, 2000, and July 11, 2000, respectively. Signed by the Mayor on August 2, 2000, it was assigned Act No. 13-400 and transmitted

to both Houses of Congress for its review. D.C. Law 13-184 became effective on October 21, 2000.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 1-301.45.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1106.02. Disclosure of financial interest. [Repealed by D.C. Law 19-124].

(a) Any candidate for nomination for election, or election, to public office at the time he or she becomes a candidate, who does not occupy any such office, shall file within one month after he or she becomes a candidate for such office, and the Mayor and the Chairman and each member of the Council of the District of Columbia holding office under the District of Columbia Home Rule Act, a Representative or Senator elected pursuant to § 1-123, the President and each member of the Board of Education, and each member of the retirement Board, and persons serving as subordinate agency heads or serving in positions designated as within the Legal Service, the Excepted Service, or the Management Supervisory Service (regardless of date of appointment) and paid at a rate of DS-13 or above, or MS-13 or above in case of the Management Supervisory Service, or designated in § 1-609.08, and each member of the District of Columbia Board of Accountancy, established by § 3-1503 [repealed]; the Board of Examiners and Registrars of Architects, established by § 3-1601 [repealed]; the Board of Directors of the Public Parking Authority of the District of Columbia, established by § 50-2503; the Board of Barber Examiners for the District of Columbia, established by § 3-1703 [repealed]; the District of Columbia Boxing and Wrestling Commission, established by § 3-604; the Board of Dental Examiners, established by § 3-2101 [repealed]; the District of Columbia Board of Cosmetology, established by § 3-2002 [repealed]; the Education Licensure Commission, established by § 38-1303; the Electrical Board, established by Commissioners' Order No. 54-1301, dated June 17, 1954; the Board of Funeral Directors, established by § 3-403 [repealed]; District of Columbia Taxicab Commission, established by Chapter 3 of Title 50; the Commission on Licensure to Practice the Healing Art in the District of Columbia, established by § 3-2903 [repealed]; the Board of Examiners for Nursing Home Administrators, established by Commissioner's Order No. 70-37, effective October 15, 1970; the Board of Occupational Therapy Practice, established by § 3-2305.5 [repealed]; the Board of Optometry, established by § 3-2403 [repealed]; the Board of Pharmacy, established by Chapter 20 of Title 2 [see now § 3-1202.08]; the Practical Nurses' Examining Board, established by § 3-2302.06 [repealed]; the Physical Therapists' Examining Board, established by § 3-2303.05 [repealed]; the Board of Psychologist Examiners, established by § 3-2304.05 [repealed]; the Plumbing Board, established by § 3-2501 [repealed]; the Board of Podiatry Examiners, established by § 3-2601 [repealed]; the District of Columbia Board of Registration for Professional Engineers, established by § 47-2886.05 [omitted]; the Real Estate Commission of the District of Columbia, established by § 42-1723 [repealed]; the Refriger-

ation and Air Conditioning Board, established by Commissioners' Order No. 55-2028, effective October 18, 1955; the Nurses Examining Board, established by § 3-2301.02 [repealed]; the Board of Examiners of Steam and Other Operating Engineers, established by § 3-2702 [repealed]; the Board of Examiners in Veterinary Medicine, established by § 3-531 [repealed]; the Alcoholic Beverage Control Board, established by § 25-104; the Board of Appeals and Review, established by Part I of Commissioners' Order No. 55-1500, effective August 11, 1955; the District of Columbia Armory Board, established by § 3-302; the Commission on the Arts and Humanities, established by § 39-203; the Condemnation Review Board, established by Commissioners' Order No. 54-2305, dated September 27, 1954; the Contract Appeals Board, D.C., established by Part VI of Commissioner's Order No. 68-399, dated June 6, 1968; the Criminal Justice Supervisory Board, established by § 3-903; the D.C. General Hospital Commission, established by § 44-1911 et seq. [repealed]; the District of Columbia Developmental Disabilities Planning Council, established by Mayor's Order No. 77-51a, dated March 30, 1977; the District of Columbia Board of Elections and Ethics, established by § 1-1001.03; the Office of Employee Appeals, established by subchapter VI of Chapter 6 of this title; Real Property Tax Appeals Commission for the District of Columbia, established by § 47-825.01a; the Board of Library Trustees, established by § 39-104; the District of Columbia Small and Local Business Opportunity Commission, established by § 2-218.21; the District of Columbia Occupational Safety and Health Board, established by Reorganization Plan No. 1 of 1978, effective June 27, 1978; the Public Employee Relations Board, established by subchapter V of Chapter 6 of this title; the Committee for the Purchase of Products and Services of the Blind and Other Severely Handicapped, established by § 32-303; the District of Columbia Rental Accommodations Commission, established by Chapter 40 of Title 42 [expired and repealed]; the Statewide Health Coordinating Commission, established by Mayor's Order No. 72-43, dated March 15, 1977; the Board of Trustees of the University of the District of Columbia, established by § 38-1202.01 et seq.; the Board of Zoning Adjustment, established by § 6-641.07; the Zoning Commission, established by § 6-621.01; the District of Columbia Commission on Postsecondary Education, established by Mayor's Order No. 75-23a, dated February 1, 1975; the District of Columbia Redevelopment Land Agency, established by § 6-301.03 [repealed]; the District of Columbia Housing Finance Agency, established by § 42-2702.01; and any board or commission created after April 23, 1980, which makes decisions in areas of contracting, procurement, administration of grants or subsidies, planning or developing policies, inspecting, licensing, regulating, auditing or acting in areas of responsibility involving any potential conflict of interest shall file annually with the Board a report containing a full and complete statement of:

(1) the name of each business entity (including sole proprietorships, partnerships, and corporations) transacting any business with the District of Columbia government (including any of its agencies, departments, boards, commissions, or educational bodies) in which such person (or his or her spouse, if property is jointly titled):

(A) has a beneficial interest (including those held in such person's own name, in trust, or in the name of a nominee) exceeding in the aggregate \$1,000; provided, however, if such interest consists of corporate stocks which are registered and traded upon a recognized national exchange, such aggregate value must exceed \$5,000;

(B) earns income for services rendered during a calendar year in excess of \$1,000; or

(C) serves as an officer, director, partner, employee, consultant, contractor, or in any other formal capacity or affiliation;

(2) any outstanding individual liability in excess of \$1,000 for borrowing by such person or his or her spouse if such liability is joint, from anyone other than a federal or state insured or regulated financial institution (including any revolving credit and installment accounts from any business enterprise regularly engaged in the business of providing revolving credit or installment accounts) or a member of such person's immediate family;

(3) all real property located in the District of Columbia (and its actual location) in which such person or his or her spouse if such property is jointly titled, has an interest with a fair market value in excess of \$5,000; provided, however, that this provision shall not apply to personal residences actually occupied by such person or his or her spouse;

(4) all professional or occupational licenses issued by the District of Columbia government held by such person;

(5) all gifts received in an aggregate value of \$100 in a calendar year by such person from any business entity (including sole proprietorships, partnerships, and corporations) transacting any business with the District of Columbia government (including any of its agencies, departments, boards, commissions, or educational bodies); and

(6) an affidavit stating that the subject candidate or office holder has not caused title to property to be placed in another person or entity for purposes of avoiding the disclosure requirements of this subsection. In addition to the foregoing information required to be disclosed pursuant to this subsection, the Mayor, the members of the Council, and the members of the Board of Education shall also disclose annually all outside income and honoraria, as defined in § 1-1108.01, accepted during the calendar year, as well as the identity of any client for whom the public official performed a service in connection with the public official's outside income if the client has a contract with the government of the District of Columbia or the client stands to gain a direct financial benefit from legislation that was pending before the Council during the calendar year. For the purpose of this subsection, "outside income" means any fixed payment at regular intervals for services rendered, self-employment, and royalties for any publication. For the purpose of this subsection, the words "immediate family" shall have the same meaning as in § 1-1106.01. The Board may, by rule, provide forms for the submission of the statement required by this subsection in aggregate categories. Information supplied pursuant to this subsection shall be modified by the filer within 30 days of any changes therein, and failure to inform the Board of such modifications is deemed to be a willful violation of this filing requirement. The

Board may, on a case-by-case basis, provide for certain exemptions to this filing requirement which are deemed to be de minimis by the Board.

(b) Before the 1st day of February of each year, the Mayor of the District of Columbia for persons appointed under the authority of subchapter VIII-B of Chapter 6 of this title (and paid at a rate of DS-13 or above), subchapter X [repealed] of Chapter 6 of this title or §§ 1-609.01 through 1-609.03 or § 1-609.09 (and paid at a rate of GS-13 or above in the District Schedule or comparable compensation under subchapter XI of Chapter 6 of this title), subchapter IX-A of Chapter 6 of this title (and paid at a rate of DS-13 or above, or MS-13 or above in the case of the Management Supervisory Service or comparable compensation under subchapter XI of Chapter 6 of this title) or designated in § 1-609.08 (and appointed by the Mayor) and members of boards and commissions listed in subsection (a) of this section; the Chairman of the Council of the District of Columbia for persons appointed under the authority of subchapter VIII-B of Chapter 6 of this title (and paid at a rate of DS-13 or above), §§ 1-609.01 through 1-609.03 or § 1-609.09 (and paid at a rate of GS-13 or above in the District Schedule or comparable compensation under subchapter XI of Chapter 6 of this title), subchapter IX-A of Chapter 6 of this title (and paid at a rate of DS-13 or above, or MS-13 or above in the case of the Management Supervisory Service or comparable compensation under subchapter XI of Chapter 6 of this title) or designated in § 1-609.08 and employed by the Council; and the Chief Executive Officer of the Board of Education, the University of the District of Columbia, or any independent agency or instrumentality by whom a person appointed under subchapter VIII-B of Chapter 6 of this title (and paid at a rate of DS-13 or above), or a person designated in § 1-609.08 is employed shall submit on behalf of their respective agency, the names and current mailing addresses of all persons required to file a financial statement as required by this section with the Director of Campaign Finance. It shall be the responsibility of each chief executive to maintain the currency of the names and current mailing addresses of all persons required to file under this chapter, and to advise the Director of Campaign Finance within 21 days of such person's appointment, election, resignation, termination, or death. During April of each year, the Board shall publish, in the District of Columbia Register, a list of names of candidates, officers, and employees required to file under this section as of the last day of the preceding March.

(c) Except as otherwise provided by this section, all papers filed under this section shall be kept by the Board in the custody of the Director for not less than 4 years. Upon receipt of a request by any member of the Board adopted by a recorded majority vote of the full Board requesting the examination and audit of any of the reports filed by any individual under subsection (b) of this section, the Director shall transmit to the Board the envelopes containing such reports. Within a reasonable time after such recorded vote has been taken, the individual concerned shall be informed of the vote to examine and audit, and shall be advised of the nature and scope of such examination. If, upon such examination, the Board determines that further consideration by the Board is warranted and within the jurisdiction of the Board, or the Director or General Counsel of the Board which is required for the discharge of his or her official

duties, the Board may receive the papers as evidence, after giving to the individual concerned due notice and opportunity for hearing in a closed session. The Board shall publicly disclose not later than the 1st day of June each year the names of the candidates, officers, and employees who have filed a report. The Director shall dispose of papers filed pursuant to this section in accordance with Chapter 17 of Title 2.

(d)(1) Reports required by this section (other than reports so required by candidates) shall be filed not later than 60 days following August 14, 1974, and not later than May 15th of each succeeding year. In the case of any person who ceases, prior to such date in any year, to occupy the office or position, the occupancy of which imposes upon him or her the reporting requirements contained in subsection (a) of this section, he or she shall file such report on the last day he or she occupies such office or position, or on such later date, not more than 3 months after such last day, as the Board may prescribe. The Board shall publish, in the District of Columbia Register, not later than the 15th day of June each year, the name of each candidate, officer, and employee who has filed a report under this section; the name of each candidate, officer, and employee who has sought and received an extension of the deadline filing requirement and the reason therefor; and the name of each candidate, officer, and employee published in the District of Columbia Register under subsection (c) of this section who has not filed a report and the reason for not filing, if known. The Director shall dispose of papers filed pursuant to this section in accordance with Chapter 17 of Title 2.

(2) Any report required to be filed with the Director from an employee who is no longer covered under the provisions of this chapter on March 1, 1979, shall be returned to such employee or his or her representative on or before June 1, 1979; provided, however, that should the Director certify that any routine audit or an investigation concerning compliance with the provisions of this chapter is currently underway, such reports shall not be returned to such employees, except as otherwise provided in this section.

(e) Reports required by this section shall be in such form and detail as the Board may prescribe. The Board may provide for the grouping of items of income, sources of income, assets, liabilities, dealings in securities or commodities, and purchases and sales of real property, when separate itemization is not feasible or is not necessary for an accurate disclosure of the income, net worth, dealing in securities and commodities or purchases, and sales of rental property of any individual.

(f) All public reports filed under this section shall be maintained by the Board as public records which, under such reasonable regulations as it shall prescribe, shall be available for inspection by members of the public.

(g) For the purposes of any report required by this section, an individual shall be considered to have been a public official, if he or she has served as a public official for more than 30 days during any calendar year in a position for which financial disclosure reports are required under this subchapter.

(h) For purposes of this section, the term:

(1) "Income" means gross income as defined in § 61 of the Internal Revenue Code of 1954.

(2) “Security” means security as defined in § 2 of the Securities Act of 1933, as amended (15 U.S.C. § 77b).

(3) “Commodity” means commodity as defined in § 2 of the Commodities Exchange Act, as amended (7 U.S.C. § 2).

(4) “Transactions in securities or commodities” means any acquisition, holding, withholding, use, transfer, or other disposition involving any security or commodity.

(5) “Immediate family” means the child, parent, grandparent, brother, or sister of an individual, and the spouse or domestic partner of such person.

(6) “Tax” means the taxes imposed under Chapter 1 of the Internal Revenue Code of 1954, under the District of Columbia Revenue Act of 1947, and under the District of Columbia Public Works Act of 1954 and any other provision of law relating to the taxation of property within the District of Columbia.

(7) “Gift” means a payment, subscription, advance, forbearance, rendering or deposit of money, services or any thing of value, unless consideration of equal or greater value is received, for the purpose of influencing the actions of a public official in making or influencing the making of an administrative decision or legislative action; and shall not include a political contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the person’s immediate family.

(i)(1) This section shall not apply to any candidate for nomination for election, or election as a member of an Advisory Neighborhood Commission, or to any member of an Advisory Neighborhood Commission, except to the extent that the section applies to the candidate or member because of his or her status other than as the candidate or member.

(2) Members of Advisory Neighborhood Commissions shall be covered under the conflict of interest provisions of § 1-1106.01.

(j) No person shall unlawfully disclose or use for any purpose other than in accordance with the terms of this chapter any information contained in financial statements required by this chapter.

(Aug. 14, 1974, 88 Stat. 467, Pub. L. 93-376, title VI, § 602; Oct. 10, 1975, D.C. Law 1-21, § 7(c), 22 DCR 2069; Oct. 30, 1975, D.C. Law 1-27, § 3(d), 22 DCR 2471; Sept. 2, 1976, D.C. Law 1-79, title II, § 203, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 102(a), (c), title IV, § 402, 24 DCR 2372; Aug. 18, 1978, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205(w), 25 DCR 5740; Apr. 23, 1980, D.C. Law 3-58, § 2(c)-(f), 27 DCR 963; Aug. 1, 1981, D.C. Law 4-23, § 2, 28 DCR 2616; Mar. 16, 1982, D.C. Law 4-88, § 3(l), (p)-(s), 29 DCR 458; Sept. 26, 1984, D.C. Law 5-111, §§ 2(a), 3, 31 DCR 3952; Mar. 25, 1986, D.C. Law 6-97, § 23(c), 33 DCR 703; Feb. 24, 1987, D.C. Law 6-192, § 21, 33 DCR 7836; May 10, 1989, D.C. Law 7-231, § 6, 36 DCR 492; Oct. 18, 1989, D.C. Law 8-41, § 2(a), 36 DCR 5758; June 8, 1990, D.C. Law 8-135, § 3, 37 DCR 2616; Mar. 17, 1993, D.C. Law 9-241, § 3, 40 DCR 629; Aug. 23, 1994, D.C. Law 10-153, § 16, 41 DCR 4652; May 16, 1995, D.C. Law 10-255, § 4, 41 DCR 5193; April 5, 2000, D.C. Law 13-79, § 2(e), 46 DCR

10460; Apr. 12, 2000, D.C. Law 13-91, § 124(e), 47 DCR 520; Apr. 27, 2001, D.C. Law 13-283, § 4, 48 DCR 1917; June 19, 2001, D.C. Law 13-313, § 6, 48 DCR 1873; Oct. 19, 2002, D.C. Law 14-213, § 4, 49 DCR 8140; Mar. 13, 2004, D.C. Law 15-105, § 25, 51 DCR 881; Oct. 20, 2005, D.C. Law 16-33, § 4004(a), 52 DCR 7503; Apr. 7, 2006, D.C. Law 16-91, § 128, 52 DCR 10637; Sept. 12, 2008, D.C. Law 17-231, § 6(c), 55 DCR 6758; Apr. 8, 2011, D.C. Law 18-363, § 3(c), 58 DCR 963; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1462. 1973 Ed., § 1-1182.

Emergency legislation. — For temporary (90-day) amendment of section, see § 4 of the Legal Services Clarification and Technical Emergency Amendment Act of 1999 (D.C. Act 13-203, December 8, 1999, 46 DCR 10456).

For temporary (90-day) amendment of section, see § 4 of the Legal Services Clarification and Technical Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-293, March 7, 2000, 47 DCR 2063).

For temporary (90 day) amendment of section, see § 4004(a) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-21. — Law 1-21 was introduced in Council and assigned Bill No. 1-87, which was referred to the Committee on Advisory Neighborhood Councils. The Bill was adopted on first and second readings on June 10, 1975 and June 24, 1975, respectively. Signed by the Mayor on July 22, 1975, it was assigned Act No. 1-33 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-27. — For legislative history of D.C. Law 1-27, see Historical and Statutory Notes following § 1-1104.03.

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-1103.01.

Legislative history of Law 3-58. — For legislative history of D.C. Law 3-58, see Historical and Statutory Notes following § 1-1105.01.

Legislative history of Law 4-23. — Law 4-23 was introduced in Council and assigned Bill No. 4-147, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 5, 1981 and May 19, 1981, respectively. Signed by the Mayor on June 5, 1981, it was assigned Act No. 4-44 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 5-111. — Law 5-111 was introduced in Council and assigned Bill No. 5-333, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 26, 1984 and July 10, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-161 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-97. — Law 6-97 was introduced in Council and assigned Bill No. 6-159, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on December 17, 1985 and January 14, 1986, respectively. Signed by the Mayor on January 28, 1986, it was assigned Act No. 6-125 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-192. — Law 6-192 was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986 and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-231. — Law 7-231 was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-41. — For legislative history of D.C. Law 8-41, see Historical and Statutory Notes following § 1-1108.01.

Legislative history of Law 8-135. — Law 8-135 was introduced in Council and assigned Bill No. 8-488, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 27, 1990 and March 27, 1990, respectively. Signed by the Mayor on April 13, 1990, it was assigned Act No. 8-191 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-241. — Law 9-241, the “Real Property Tax Assessment Appeal Process Revision Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-199, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 5, 1993, it was assigned Act No. 9-375 and transmitted to both Houses of Congress for its review. D.C. Law 9-241 became effective on March 17, 1993.

Legislative history of Law 10-153. — Law 10-153, the “Public Parking Authority Establishment Act of 1994,” was introduced in Council and assigned Bill No. 10-532, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 3, 1994, and June 7, 1994, respectively. Signed by the Mayor on June 30, 1994, it was assigned Act No. 10-266 and transmitted to both Houses of Congress for its review. D.C. Law 10-153 became effective on August 23, 1994.

Legislative history of Law 10-255. — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective on May 16, 1995.

Legislative history of Law 13-79. — For Law 13-79, see notes following § 1-1102.09.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-1102.05.

Legislative history of Law 13-283. — Law 13-283, the “Freedom of Information Amendment Act of 2000,” was introduced in Council

and assigned Bill No. 13-829, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 22, 2001, it was assigned Act No. 13-581 and transmitted to both Houses of Congress for its review. D.C. Law 13-283 became effective on April 27, 2001.

Legislative history of Law 13-313. — Law 13-313, the “Technical Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-879, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 19, 2001, it was assigned Act No. 13-574 and transmitted to both Houses of Congress for its review. D.C. Law 13-313 became effective on June 19, 2001.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 1-603.01.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 1-751.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 38-1306.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 1-301.45.

Legislative history of Law 18-363. — For history of Law 18-363, see notes under § 1-523.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Mayor’s Orders. — Amendment of Organization Order No. 112, establishing Board of Appeals and Review: See Mayor’s Order 84-31, February 9, 1984.

Editor’s notes. — Reorganization Plan No. 3 of 1988 changed the name of the Commission from the Educational Institution Licensure Commission to the Education Licensure Commission.

D.C. Law 7-231 in subsection (a) inserted “and each member of the Retirement Board”. This language was omitted from this section as codified between June, 1990, and September, 2008.

Termination of Federal Disclosure Requirements: See Pub. L. 99-573, § 6.

Part Fi

USE OF GOVERNMENT RESOURCES FOR CAMPAIGN-RELATED ACTIVITIES.

§ 1-1106.51. Prohibition on the use of District government resources for campaign related activities. [Repealed by D.C. Law 19-124].

(a) No resources of the District of Columbia government, including, the expenditure of funds, the personal services of employees during their hours of work, and nonpersonal services, including supplies, materials, equipment, office space, facilities, telephones and other utilities, shall be used to support or oppose any candidate for elected office, whether partisan or nonpartisan, or to support or oppose any initiative, referendum, or recall measure, including a charter amendment referendum conducted in accordance with § 1-203.03.

(b)(1) This part shall not prohibit the Mayor, the Chairman and members of the Council, or the President and members of the Board of Education from expressing their views on a District of Columbia election as part of their official duties.

(2) This subsection shall not be construed to authorize any member of the staff of the Mayor, the Chairman and members of the Council, or the President and members of the Board of Education, or any other employee of the executive or legislative branch to engage in any activity to support or oppose any candidate for elected office, whether partisan or nonpartisan, an initiative, referendum, or recall measure during their hours of work, or the use of any nonpersonal services including supplies, materials, equipment, office space, facilities, telephones and other utilities to support or oppose an initiative, referendum, or recall matter.

(Aug. 14, 1974, 88 Stat. 470, Pub. L. 93-376, title VI-A, § 651, as added Oct. 13, 2001, D.C. Law 14-36, § 2, 48 DCR 7111; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 14-36. — Law 14-36, the “Campaign Finance Amendment Act of 2001”, was introduced in Council and assigned Bill No. 14-108, which was referred to

the Committee on Government Operations. The Bill was adopted on first and second readings on June 5, 2001, and June 26, 2001, respectively. Signed by the Mayor on July 12, 2001, it was assigned Act No. 14-98 and transmitted to both Houses of Congress for its review. D.C. Law 14-36 became effective on October 13, 2001.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Part G
MISCELLANEOUS PROVISIONS.

§ 1-1107.01. Penalties; prosecutions. [Repealed by D.C. Law 19-124].

(a) Except as provided in subsection (b) of this section, any person or political committee who violates any of the provisions of this chapter shall be fined not more than \$5,000, or shall be imprisoned for not longer than 6 months, or both.

(b) Any person who knowingly files any false or misleading statement, report, voucher, or other paper, or makes any false or misleading statement to the Board, shall be fined not more than \$10,000, or shall be imprisoned for not longer than 5 years, or both.

(c) The penalties provided in this section shall not apply to any person or political committee who, before August 14, 1974, during calendar year 1974, makes political contributions or receives political contributions or makes any political campaign expenditures, in excess of any limitation placed on such contributions or expenditures by this chapter, except such person or political committee shall not make any further such contributions or expenditures during the remainder of calendar year 1974.

(d) Prosecutions of violations of this chapter, except as provided in § 1-1001.14(b)(4), shall be brought by the United States Attorney for the District of Columbia in the name of the United States.

(e) The provisions of this section shall not apply to violations of part E of subchapter I.

(f) All actions of the Board or of the United States Attorney for the District of Columbia to enforce the provisions of this chapter must be initiated within 3 years of the actual occurrence of the alleged violation of the chapter.

(Aug. 14, 1974, 88 Stat. 470, Pub. L. 93-376, title VII, § 701; Apr. 23, 1977, D.C. Law 1-126, title III, § 302(t), 24 DCR 2372; Jan. 2, 1979, D.C. Law 2-101, § 3, 25 DCR 257; Mar. 16, 1982, D.C. Law 4-88, § 3(m), (r), 29 DCR 458; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1471. 1973 Ed., § 1-1191.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 2-101. — For legislative history of D.C. Law 2-101, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1107.01a. Document under oath. [Repealed by D.C. Law 19-124].

(a) Notwithstanding any other provisions of this subchapter, neither the Board, or any of its officers or employees, nor the Director, or any of his or her officers or employees, may require that a document be sworn under oath unless the Board and Director maintain at the place of receipt of such documents and during regular business days and hours, a notary public to administer such oaths.

(b) If no such notary public is available, persons wishing to file documents for which an oath is requested, may, in lieu thereof, affirm by their signature that their statements are true under penalty of § 1-1107.01.

(Aug. 14, 1974, 88 Stat. 470, Pub. L. 93-376, title VII, § 701a, as added Mar. 16, 1982, D.C. Law 4-88, § 3(n), 29 DCR 458; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1471.1.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1107.02. Use of surplus campaign funds. [Repealed by D.C. Law 19-124].

(a) Within the limitations specified in this subchapter, any surplus, residual, or unexpended campaign funds received by or on behalf of an individual who seeks nomination for election, or election to office shall be contributed to a political party for political purposes, used to retire the proper debts of his or her political committee which received such funds, or returned to the donors as follows:

(1) In the case of an individual defeated in an election, within 6 months following such election;

(2) In the case of an individual elected to office, within 6 months following such election; and

(3) In the case of an individual ceasing to be a candidate, within 6 months thereafter.

(b) An individual defeated or elected to office as member of the Board of Education under this subchapter, or a political committee formed to collect signatures or advocate the ratification or defeat of any initiative, referendum, or recall measure shall be authorized to transfer any surplus, residue, or unexpended campaign funds to any charitable, scientific, literary, or educational organization or organizations which meet the requirements of § 47-1803.03(a)(8); and an individual elected to an office under this chapter and authorized to establish a program of constituent services under § 1-1104.03 shall be authorized to transfer any surplus, residue, or unexpended campaign funds to his or her program of constituent services.

(c) Notwithstanding any other provision of this subchapter, any funds remaining in the John Wilson Campaign Fund shall be transferred to the John Wilson Achievement Award Fund.

(Aug. 14, 1974, 88 Stat. 471, Pub. L. 93-376, title VII, § 703; Sept. 2, 1976, D.C. Law 1-79, title VIII, § 805, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title IV, § 402, 24 DCR 2372; June 7, 1979, D.C. Law 3-1, § 3(f), 25 DCR 9454; Mar. 16, 1982, D.C. Law 4-88, § 3(o), (r), (s), 29 DCR 458; July 18, 2000, D.C. Law 13-138, § 2, 47 DCR 3424; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1472. 1973 Ed., § 1-1192.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 1-79. — For legislative history of D.C. Law 1-79, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 1-126. — For legislative history of D.C. Law 1-126, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 3-1. — For legislative history of D.C. Law 3-1, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1101.01.

Legislative history of Law 13-138. — Law 13-138, the “John Wilson Campaign Fund Transfer Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-238, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on March 7, 2000, and April 4, 2000, respectively. Signed by the Mayor on April 20, 2000, it was assigned Act No. 13-320 and transmitted to both Houses of Congress for its review. D.C. Law 13-138 became effective on July 18, 2000.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1107.03. Authority of Council. [Repealed by D.C. Law 19-124].

Notwithstanding any other provision of law, or any rule of law, nothing in this subchapter shall be construed as limiting the authority of the Council of the District of Columbia to enact any act or resolution after January 2, 1975, pursuant to the District of Columbia Self-Government and Governmental Home Rule Act with respect to any matter covered by this subchapter.

(Aug. 14, 1974, 88 Stat. 472, Pub. L. 93-376, title VII, § 707; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1473. 1973 Ed., § 1-1193.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Es-

tablishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Part H

LIMITATIONS ON HONORARIA AND ROYALTIES.

§ 1-1108.01. **Limitations on honoraria and royalties. [Repealed by D.C. Law 19-124].**

(a) Except as provided in subsections (a-1) and (c) of this section, neither the Mayor, the Chairman of the Council, nor any member of the Council or of the Board of Education, nor any member of his or her immediate family as that term is defined in § 1-1106.01(i)(5), shall receive honoraria exceeding \$10,000 in the aggregate during any calendar year. For the purpose of this subsection, the term “honorarium” means payment of money or anything of value for an appearance, speech, or article by the public official, except that there shall not be taken into account for the purposes of this subsection any reimbursement for or payment of actual and necessary travel expenses incurred by the Mayor, the Chairman, a Councilmember, or a member of the Board of Education and his or her spouse. For the purpose of computing the \$10,000 limit on honoraria established under this subsection, an honorarium shall be considered received in the year in which the right to receive the honorarium accrues.

(a-1) As of January 1, 2001, subsection (a) of this section shall no longer apply to members of the Board of Education.

(b) Except as provided in subsection (c) of this section, neither the Mayor, the Chairman of the Council, nor any member of the Mayor’s or of the Chairman of the Council’s immediate family, as that term is defined in § 1-1106.01(i)(5), shall accept royalties for the works of the Mayor or of the Chairman of the Council that exceed \$10,000 in the aggregate during any calendar year. For the purpose of computing the limit on royalties established under this subsection, a royalty shall be considered received during the calendar year in which the right to receive the royalty accrues.

(c) For the purpose of this section, any royalty or part of a royalty, or any honorarium or part of an honorarium paid to a charitable organization by or on behalf of any of the foregoing public officials shall not be calculated as part of an aggregate total.

(Aug. 14, 1974, Pub. L. 93-376, title VIII, § 801, as added Oct. 18, 1989, D.C. Law 8-41, § 2(b), 36 DCR 5748; Apr. 13, 2005, D.C. Law 15-348, § 201, 52 DCR 1991; April 27, 2012, D.C. Law 19-124, § 501(d), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1481.

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 2 of Honoraria Temporary Amendment Act of 2002 (D.C. Law 14-211, October 19, 2002, law notification 49 DCR 10467).

For temporary (225 day) amendment of section, see § 2 of Honoraria Temporary Amendment Act of 2003 (D.C. Law 15-27, September 23, 2003, law notification 50 DCR 8350).

For temporary (225 day) amendment of section, see § 2 of Honoraria Temporary Amendment Act of 2004 (D.C. Law 15-183, September 8, 2004, law notification 51 DCR 9225).

Emergency legislation. — For temporary (90 day) amendment of section, see §§ 2 and 3 of Honoraria Emergency Amendment Act of 2002 (D.C. Act 14-401, June 26, 2002, 49 DCR 6529).

For temporary (90 day) amendment of sec-

tion, see § 2 of Honoraria Emergency Act of 2003 (D.C. Act 15-86, May 19, 2003, 50 DCR 4323).

For temporary (90 day) amendment of section, see § 2 of Honoraria Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-130, July 29, 2003, 50 DCR 6843).

For temporary (90 day) amendment of section, see § 2 of Honoraria Emergency Act of 2004 (D.C. Act 15-413, April 21, 2004, 51 DCR 4686).

For temporary (90 day) amendment of section, see § 2 of Honoraria Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-524, August 2, 2004, 51 DCR 9136).

For temporary (90 day) repeal of section, see § 401(d) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 8-41. — Law 8-41 was introduced in Council and assigned

Bill No. 8-306, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 27, 1989 and July 11, 1989, respectively. Signed by the Mayor on July 27, 1989, it was assigned Act No. 8-70 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-348. — Law 15-348, the “Public School Enrollment Integrity Clarification and Board of Education Honoraria Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-411 which was referred to the Committee Education, Libraries and Recreation. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 22, 2005, it was assigned Act No. 15-742 and transmitted to both Houses of Congress for its review. D.C. Law 15-348 became effective on April 13, 2005.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Subchapter II. Campaign Contribution Limitation.

§ 1-1131.01. Contribution limitations. [Repealed by D.C. Law 19-124].

(a) No person shall make any contribution which, and no person shall receive any contribution from any person which, when aggregated with all other contributions received from that person, relating to a campaign for nomination as a candidate or election to public office, including both the primary and general election or special elections, exceeds:

(1) In the case of a contribution in support of a candidate for Mayor or for the recall of the Mayor, \$2,000;

(2) In the case of a contribution in support of a candidate for Chairman of the Council or for the recall of the Chairman of the Council, \$1,500;

(3) In the case of a contribution in support of a candidate for member of the Council elected at-large or for the recall of a member of the Council elected at-large, \$1,000;

(4) In the case of a contribution in support of a candidate for member of the Board of Education elected at-large or for member of the Council elected from a ward or for the recall of a candidate for member of the Board of Education elected at-large or for the recall of a member of the Council elected from a ward, \$500;

(5) In the case of a contribution in support of a candidate for member of the Board of Education elected from a ward or for the recall of a member of the Board of Education elected from a ward or for an official of a political party, \$200; and

(6) In the case of a contribution in support of a candidate for a member of an Advisory Neighborhood Commission, \$25.

(b)(1) No person shall make any contribution in any 1 election for Mayor, Chairman of the Council, each member of the Council, and each member of the

Board of Education (including primary and general elections, but excluding special elections), which when combined with all other contributions made by that person in that election to candidates and political committees exceeds \$8,500.

(2) All contributions to a candidate's principal political committee shall be treated as contributions to the candidate and shall be subject to the contribution limitations contained in this section.

(c) In no case shall any person receive or make any contribution in legal tender in an amount of \$25 or more.

(d)(1) No person shall make contributions to any 1 political committee in any one election (including primary and general elections, but excluding special elections) that, in the aggregate, exceeds \$5,000.

(2) For the purposes of this subsection, the term "political committee" does not include an individual.

(e) No person shall make a contribution in the name of another person, and no person shall knowingly accept a contribution made by one person in the name of another person.

(f) Any expenditure made by any person advocating the election or defeat or any candidate for office which is not made at the request or suggestion of the candidate, any agent or the candidate, or any political committee authorized by the candidate to make expenditures or receive contributions for the candidate is not considered a contribution to or an expenditure by or on behalf of the candidate for the purposes of the limitations specified in this subchapter.

(g) All contributions made by any person directly or indirectly to or for the benefit of a particular candidate or that candidate's political committee, which are in any way earmarked, encumbered, or otherwise directed through an intermediary or conduit to that candidate or political committee, shall be treated as contributions from that person to that candidate or political committee and shall be subject to the limitations established by this section.

(h)(1) No candidate or member of the immediate family of a candidate may make a loan or advance from his or her personal funds for use in connection with a campaign of that candidate for nomination for election, or for election, to a public office unless that loan or advance is evidenced by a written instrument fully disclosing the terms, conditions, and parts to the loan or advance. The amount of any loan or advance shall be included in computing and applying the limitations contained in this section only to the extent of the balance of the loan or advance which is unpaid at the time of determination.

(2) For purposes of this subsection, the term "immediate family" means the candidate's spouse, parent, brother, sister, or child, and the spouse of a candidate's parent, brother, sister or child.

(i) No contributions made to support or oppose initiative or referendum measures shall be affected by the provisions of this section.

(Mar. 17, 1993, D.C. Law 9-204, § 3, 40 DCR 1; June 13, 1996, D.C. Law 11-144, § 3(a), 43 DCR 2174; June 19, 2001, D.C. Law 13-313, § 5, 48 DCR 1873; April 27, 2012, D.C. Law 19-124, § 501(e), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1441.1.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Board of Education Campaign Contribution Clarification Temporary Amendment Act of 2000 (D.C. Law 13-217, April 3, 2001, law notification 48 DCR 3459).

For temporary (225 day) amendment of section, see § 2 of Board of Education Campaign Contribution Clarification Temporary Act of 2002 (D.C. Law 14-249, March 25, 2003, law notification 50 DCR 2762).

For temporary (225 day) amendment of section, see § 2 of Board of Education Campaign Contribution Clarification Temporary Amendment Act of 2003 (D.C. Law 15-102, March 10, 2004, law notification 51 DCR 3622).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2 of the Board of Education Campaign Contribution Clarification Emergency Amendment Act of 2000 (D.C. Act 13-416, August 14, 2000, 47 DCR 7304).

For temporary (90 day) amendment of section, see § 2 of the Board of Education Campaign Contribution Clarification Legislative Review Emergency Amendment Act of 2000 (D.C. Act 13-483, December 18, 2000, 48 DCR 15).

For temporary (90 day) amendment of section, see § 2 of Board of Education Campaign Contribution Clarification Emergency Amendment Act of 2002 (D.C. Act 14-502, October 23, 2002, 49 DCR 10033).

For temporary (90 day) amendment of section, see § 2 of Board of Education Campaign Contribution Clarification Emergency Amend-

ment Act of 2003 (D.C. Act 15-237, November 25, 2003, 50 DCR 10908).

For temporary (90 day) repeal of section, see § 401(e) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 9-204. — Law 9-204, the “District of Columbia Campaign Contribution Limitation Initiative of 1992,” was submitted to the electors of the District of Columbia on November 3, 1992, as Initiative No. 41. The results of the voting, certified by the Board of Elections and Ethics on December 23, 1992, were 122,502 for the Initiative and 66,843 against the Initiative. It was transmitted to both Houses of Congress for its review on January 13, 1993.

Legislative history of Law 11-144. — For legislative history of D.C. Law 11-144, see Historical and Statutory Notes following § 1-1104.01.

Legislative history of Law 13-313. — For Law 13-313, see notes following § 1-1106.02.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Editor’s notes. — Addition by Initiative 41: D.C. Law 9-204 was enacted by the electors of the District of Columbia in Initiative Measure 41.

Applicability of chapter to Law 11-144: Section 4 of D.C. Law 11-144, the Contribution Limitation Initiative Amendment Act of 1996, provided that D.C. Code § 1-1101.01 et seq. shall apply to the act. D.C. Law 11-144 repeals § 1-1104.01 and amends §§ 1-1131.01, 1-1131.03, and 1-1104.02.

§ 1-1131.02. Partnership contributions. [Repealed by D.C. Law 19-124].

(a) A contribution by a partnership shall be attributed to each partner:

(1) In direct proportion to his or her share of the partnership profits, according to instructions which shall be provided by the partnership to the political committee or candidate; or

(2) By agreement of the partners, as long as:

(A) Only the profits of the partners to whom the contribution is attributed are reduced (or losses increased); and

(B) These partners’ profits are reduced (or losses increased) in proportion to the contribution attributed to each of them.

(b) A contribution by a partnership shall not exceed the limitations on contributions pursuant to this subchapter. No portion of such contribution may be made from the profits of a corporation that is a partner.

(Mar. 17, 1993, D.C. Law 9-204, § 4, 40 DCR 1; April 27, 2012, D.C. Law 19-124, § 501(e), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1441.2.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(e) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 9-204. — For

legislative history of D.C. Law 9-204, see Historical and Statutory Notes following § 1-1131.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Editor's notes. — Addition by Initiative 41: D.C. Law 9-204 was enacted by the electors of the District of Columbia in Initiative Measure 41.

§ 1-1131.03. Reporting requirements. [Repealed by D.C. Law 19-124].

(a) Every person who receives a contribution of \$50 or more for or on behalf of a political committee shall, on demand of the treasurer, and in any event within 5 days after receipt of such contribution, submit to the treasurer of such committee a detailed account thereof, including the amount, the name and address (including the occupation and the principal place of business, if any) of the person making such contribution, and the date on which such contribution was received. All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members, or associates of such committee.

(b) Except for accounts of expenditures made out of a petty cash fund, the treasurer of a political committee, and each candidate, shall keep a detailed and exact account of the full name and mailing address (including the occupation and the principal place of business, if any) of every person making a contribution of \$50 or more, and the date and amount thereof.

(c) Each report shall disclose the full name and mailing address (including the occupation and principal place of business, if any) of each person who has made 1 or more contributions to or for such committee or candidate (including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events) within the calendar year in the aggregate amount of value in excess of \$50 or more, together with the amount and date of such contributions.

(d) Each contribution, rebate, refund, or any other receipt of \$15 or more not otherwise listed shall be reported.

(e) Candidates for advisory neighborhood commission shall not be bound by this section.

(Mar. 17, 1993, D.C. Law 9-204, § 5, 40 DCR 1; June 13, 1996, D.C. Law 11-144, § 3(b), 43 DCR 2174; April 27, 2012, D.C. Law 19-124, § 501(e), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-1441.3.

Temporary Addition of Section. — For temporary (225 day) amendment of section, see §§ 2 to 6 of Exploratory Committee Disclosure Informational Report and Contribution Prohibition Temporary Amendment Act of 2005 (D.C. Law 16-34, October 20, 2005, law notification 52 DCR 10008).

Emergency legislation. — For temporary (90 day) addition, see §§ 2 to 6 of Exploratory Committee Disclosure Informational Report and Contribution Prohibition Emergency Amendment Act of 2005 (D.C. Act 16-100, June 21, 2005, 52 DCR 6086).

For temporary (90 day) addition, see §§ 2 to 6 of Exploratory Committee Disclosure Information Report and Contribution Prohibition

Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-178, October 4, 2005, 52 DCR 9076).

For temporary (90 day) repeal of section, see § 401(e) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 9-204. — For legislative history of D.C. Law 9-204, see Historical and Statutory Notes following § 1-1131.01.

Legislative history of Law 11-144. — For legislative history of D.C. Law 11-144, see His-

torical and Statutory Notes following § 1-1104.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Editor's notes. — Addition by Initiative 41: D.C. Law 9-204 was enacted by the electors of the District of Columbia in Initiative Measure 41.

Applicability of chapter to Law 11-144: Section 4 of D.C. Law 11-144, the Contribution Limitation Initiative Amendment Act of 1996, provided that D.C. Code § 1-1101.01 et seq. shall apply to the act. D.C. Law 11-144 repeals § 1-1104.01 and amends §§ 1-1131.01, 1-1131.03, and 1-1104.02.

Subchapter III. Exploratory Committees.

§ 1-1151.01. Definitions. [Repealed by D.C. Law 19-124].

For the purposes of this subchapter, the term “exploratory committee” means any individual, or group of individuals, organized for the purpose of examining or exploring the feasibility of becoming a candidate for an elective office in the District of Columbia.

(Feb. 2, 2008, D.C. Law 17-104, § 2, 54 DCR 12218; April 27, 2012, D.C. Law 19-124, § 501(f), 59 DCR 1862.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Exploratory Committee Regulation Temporary Amendment Act of 2007 (D.C. Law 17-2, April 18, 2007, law notification 54 DCR 6581).

Emergency legislation. — For temporary (90 day) addition, see § 2 of Exploratory Committee Regulation Emergency Amendment Act of 2007 (D.C. Act 17-13, January 29, 2007, 54 DCR 1520).

For temporary (90 day) repeal of section, see § 401(f) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 17-104. — Law 17-104, the “Exploratory Committee Regulation Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-36 which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on October 2, 2007, and November 6, 2007, respectively. Signed by the Mayor on November 28, 2007, it was assigned Act No. 17-223 and transmitted to both Houses of Congress for its review. D.C. Law 17-104 became effective on February 2, 2008.

Legislative history of Law 19-124. — April 27, 2012, D.C. Law 19-124, § 501(f), 59 DCR 1862

§ 1-1151.02. Reports of exploratory committees. [Repealed by D.C. Law 19-124].

(a) Each exploratory committee shall file an informational report with the Office of Campaign Finance that lists the following:

(1) Each contributor's full name and the contribution received by the committee;

(2) Itemized expenditures by category, including polling, travel, office rent, and administrative costs; and

(3) The balance of the exploratory committee fund.

(b)(1) The informational report shall be filed semiannually, on January 31st

and July 31st; provided, that within 12 months of an election for the office that is the subject of the exploratory committee, reports shall be filed on the last day of each month.

(2) A final informational report shall be filed within 30 days of the termination of an exploratory committee.

(Feb. 2, 2008, D.C. Law 17-104, § 3, 54 DCR 12218; April 27, 2012, D.C. Law 19-124, § 501(f), 59 DCR 1862.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 3 of Exploratory Committee Regulation Temporary Amendment Act of 2007 (D.C. Law 17-2, April 18, 2007, law notification 54 DCR 6581).

Emergency legislation. — For temporary (90 day) addition, see § 3 of Exploratory Committee Regulation Emergency Amendment Act of 2007 (D.C. Act 17-13, January 29, 2007, 54 DCR 1520).

For temporary (90 day) repeal of section, see § 401(f) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 17-104. — For Law 17-104, see notes following § 1-1151.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1151.03. Fund balance requirements. [Repealed by D.C. Law 19-124].

(a) Any balance in the exploratory committee fund shall only be transferred to an established principal campaign committee, political committee, or charitable organization in accordance with § 47-1803.03(a)(8).

(b) Exploratory committee fund balances shall not be deemed the personal funds of any individual, including the individual seeking elective office.

(Feb. 2, 2008, D.C. Law 17-104, § 4, 54 DCR 12218; April 27, 2012, D.C. Law 19-124, § 501(f), 59 DCR 1862.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 4 of Exploratory Committee Regulation Temporary Amendment Act of 2007 (D.C. Law 17-2, April 18, 2007, law notification 54 DCR 6581).

Emergency legislation. — For temporary (90 day) addition, see § 4 of Exploratory Committee Regulation Emergency Amendment Act of 2007 (D.C. Act 17-13, January 29, 2007, 54 DCR 1520).

For temporary (90 day) repeal of section, see § 401(f) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 17-104. — For Law 17-104, see notes following § 1-1151.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1151.04. Aggregate and individual contribution limits. [Repealed by D.C. Law 19-124].

(a) Exploratory committees shall not receive aggregate contributions in excess of:

- (1) \$200,000 for a Mayoral exploratory committee;
- (2) \$150,000 for a Chairman of the Council exploratory committee;
- (3) \$100,000 for an at-large member of the Council exploratory committee;
- (4) \$50,000 for a Ward Councilmember or President of the State Board of Education exploratory committee;

(5) \$20,000 for a member of the State Board of Education exploratory committee.

(b) Exploratory committees shall not receive individual contributions in excess of:

- (1) \$2,000 for a Mayoral exploratory committee;
- (2) \$1,500 for a Chairman of the Council exploratory committee;
- (3) \$1,000 for an at-large member of the Council exploratory committee;
- (4) \$500 for a Ward Councilmember or President of the State Board of Education exploratory committee; and
- (5) \$200 for a member of the State Board of Education exploratory committee.

(Feb. 2, 2008, D.C. Law 17-104, § 5, 54 DCR 12218; April 27, 2012, D.C. Law 19-124, § 501(f), 59 DCR 1862.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 5 of Exploratory Committee Regulation Temporary Amendment Act of 2007 (D.C. Law 17-2, April 18, 2007, law notification 54 DCR 6581).

Emergency legislation. — For temporary (90 day) addition, see § 5 of Exploratory Committee Regulation Emergency Amendment Act of 2007 (D.C. Act 17-13, January 29, 2007, 54 DCR 1520).

For temporary (90 day) repeal of section, see § 401(f) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 17-104. — For Law 17-104, see notes following § 1-1151.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1151.05. Contribution prohibition. [Repealed by D.C. Law 19-124].

When an individual decides to run for office and becomes a candidate, contributions received during the exploratory period shall apply to the campaign contribution limits for the candidate as provided under § 1-1131.01.

(Feb. 2, 2008, D.C. Law 17-104, § 6, 54 DCR 12218; April 27, 2012, D.C. Law 19-124, § 501(f), 59 DCR 1862.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 6 of Exploratory Committee Regulation Temporary Amendment Act of 2007 (D.C. Law 17-2, April 18, 2007, law notification 54 DCR 6581).

Emergency legislation. — For temporary (90 day) addition, see § 6 of Exploratory Committee Regulation Emergency Amendment Act of 2007 (D.C. Act 17-13, January 29, 2007, 54 DCR 1520).

For temporary (90 day) repeal of section, see § 401(f) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 17-104. — For Law 17-104, see notes following § 1-1151.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-1151.06. Time limit for the operation of an exploratory committee. [Repealed by D.C. Law 19-124].

The duration of an exploratory committee shall not exceed 18 months for any one office. Once a candidate's exploratory committee reaches the maximum duration of 18 months, the candidate shall file a declaration of candidacy and

form a principal political campaign committee or terminate the exploratory committee.

(Feb. 2, 2008, D.C. Law 17-104, § 7, 54 DCR 12218; April 27, 2012, D.C. Law 19-124, § 501(f), 59 DCR 1862.)

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(f) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 17-104. — For Law 17-104, see notes following § 1-1151.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

CHAPTER 11A. GOVERNMENT ETHICS AND ACCOUNTABILITY.

Subchapter I. Definitions

Sec.

1-1161.01. Definitions.

Subchapter II. Ethics Act

1-1162.01. Short title.

PART A

District of Columbia Board of Ethics and Government Accountability Establishment

1-1162.02. Establishment of the District of Columbia Board of Ethics and Government Accountability.

1-1162.03. Composition; term; qualifications; removal.

1-1162.04. Meetings.

1-1162.05. Compensation.

1-1162.06. Professional staff.

1-1162.07. Budget.

1-1162.08. Quorum; delegation.

1-1162.09. Rules.

1-1162.10. Board of Ethics and Government Accountability Fund.

PART B

Director of Government Ethics

1-1162.11. Powers of the Director of Government Ethics.

1-1162.12. Preliminary investigations.

1-1162.13. Formal investigation.

1-1162.14. Hearings.

1-1162.15. Disposition.

1-1162.16. Dismissal of meritless claim, complaint, or request for investigation.

1-1162.17. Appeals.

1-1162.18. Enforcement of subpoena.

1-1162.19. Advisory opinions.

1-1162.20. Reports.

1-1162.21. Penalties.

1-1162.22. Additional penalties for public officials.

PART C

Conflicts of Interest

1-1162.23. Conflicts of interest.

PART D

Financial Disclosures and Honoraria

1-1162.24. Public reporting.

1-1162.25. Confidential disclosure of financial interest.

1-1162.26. Limitations on honoraria and royalties.

PART E

Lobbyists

Sec.

1-1162.27. Persons required to register.

1-1162.28. Exceptions.

1-1162.29. Registration form.

1-1162.30. Activity reports.

1-1162.31. Prohibited activities.

1-1162.32. Penalties; prohibition from serving as lobbyist; citizen suits.

Subchapter III. Campaign Finance

1-1163.01. Short title.

PART A

Office of Campaign Finance

1-1163.02. Office of Director of Campaign Finance established; enforcement of subchapter.

1-1163.03. Powers of Director of Campaign Finance.

1-1163.04. Duties of Director of Campaign Finance.

1-1163.05. District of Columbia Board of Elections created.

1-1163.06. Advisory opinions.

PART B

Campaign Finance Committees

1-1163.07. Organization of committees.

1-1163.08. Designation of campaign depositories; petty cash fund.

1-1163.09. Reporting.

1-1163.10. Principal campaign committee.

1-1163.11. Specific requirements for statements of organization filed by political committees.

1-1163.12. Registration statement of candidate; depository information.

1-1163.13. Reports by others than committees and candidates.

1-1163.14. Exemption for total expenses under \$500.

1-1163.15. Identification of campaign literature.

1-1163.16. Candidate's liability for financial obligation incurred by a committee.

1-1163.17. Specific requirements for reports of receipts and expenditures by political committees.

1-1163.18. Fund balance requirements of exploratory committees.

1-1163.19. Aggregate and individual contribution limits of exploratory committees.

- Sec.
1-1163.20. Contributions to exploratory committees.
1-1163.21. Duration of an exploratory committee.
1-1163.22. Contributions to inaugural committees.
1-1163.23. Fund balance requirements for inaugural committees.
1-1163.24. Duration of an inaugural committee.
1-1163.25. Fund balance requirements for transition committees.
1-1163.26. Contributions to transition committees.
1-1163.27. Duration of a transition committee; restriction on formation.

PART C

Legal Defense Funds

- 1-1163.28. Legal defense committees — organization.
1-1163.29. Legal defense committees — contributions and expenditures.
1-1163.30. Designation of legal defense depositories.
1-1163.31. Reports of receipts and expenditures by legal defense committees.

- Sec.
1-1163.32. Formal requirements for reports and statements.

PART D

Contribution Limitations

- 1-1163.33. Contribution limitations.
1-1163.34. Partnership contributions.

PART E

Prohibited Activities and Enforcement

- 1-1163.35. Penalties.
1-1163.36. Prohibition on the use of District government resources for campaign-related activities.
1-1163.37. Document under oath.

PART F

Constituent Services

- 1-1163.38. Constituent services.

Subchapter IV. Transition Provisions; Applicability

- 1-1164.01. Transition provisions; applicability.

Subchapter I. Definitions.

§ 1-1161.01. Definitions.

For the purposes of this chapter, the term:

(1) “Administrative decision” means any activity directly related to action by an executive agency to issue a Mayor’s order, to cause to be undertaken a rulemaking proceeding (which does not include a formal public hearing) under Chapter 5 of Title 2, or to propose legislation or make nominations to the Council, the President, or Congress.

(2) “Administrative Procedure Act” means Chapter 5 of Title 2 [§ 2-501 et seq.].

(3) “Affiliated organization” means:

(A) An organization or entity:

(i) In which the employee serves as officer, director, trustee, general partner, or employee;

(ii) In which the employee or member of the employee’s household is a director, officer, owner, employee, or holder of stock worth \$1,000 or more at fair market value; or

(iii) That is a client of the employee or a member of the employee’s household; or

(B) A person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

(4) “Business” means any corporation, partnership, sole proprietorship, firm, nonprofit corporation, enterprise, franchise, association, organization,

self-employed individual, holding company, joint stock, trust, and any legal entity through which business is conducted, whether for profit or not.

(5) "Business with which he or she is associated" means any business of which the person or member of his or her household is a director, officer, owner, employee, or holder of stock worth \$1,000 or more at fair market value, and any business that is a client of that person.

(6) "Candidate" means an individual who seeks nomination for election, or election, to office, whether or not the individual is nominated or elected. For the purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if the individual:

(A) Obtained or authorized any other person to obtain nominating petitions to qualify himself or herself for nomination for election, or election, to office;

(B) Received contributions or made expenditures, or has given consent to any other person to receive contributions or make expenditures, with a view to bringing about his or her nomination for election, or election, to office; or

(C) Knows, or has reason to know, that any other person has received contributions or made expenditures for that purpose, and has not notified that person in writing to cease receiving contributions or making expenditures for that purpose; provided, that an individual shall not be deemed a candidate if the individual notifies each person who has received contributions or made expenditures that the individual is only testing the waters, has not yet made any decision whether to seek nomination or election to public office, and is not a candidate. An individual deemed to be a candidate for the purposes of this chapter shall not be deemed, solely by reason of that status, to be a candidate for the purposes of any other law.

(7) "Code of Conduct" means those provisions contained in the following:

(A) The Code of Official Conduct of the Council of the District of Columbia, as adopted by the Council;

(B) Sections 1-618.01 through 1-618.02;

(C) Chapter 7 of Title 2 [§ 2-701 et seq.];

(D) Section 2-354.16;

(E) Chapter 18 of Title 6B of the District of Columbia Municipal Regulations;

(F) Parts C, D, and E of subchapter II, and part F of subchapter III of this chapter for the purpose of enforcement by the Elections Board of violations of § 1-1163.68 that are subject to the penalty provisions of § 1-1162.21.

(8) "Commodity" means commodity as defined in section 1a of the Commodity Exchange Act, approved September 21, 1922 (42 Stat. 998; 7 U.S.C. § 1a).

(9) "Compensation" means any money or an exchange of value received, regardless of its form, by a person acting as a lobbyist.

(10)(A) "Contribution" means

(i) A gift, subscription (including any assessment, fee, or membership dues), loan (except a loan made in the regular course of business by a business engaged in the business of making loans), advance, or deposit of money or anything of value, made for the purpose of financing, directly or indirectly;

- (I) The election campaign of a candidate;
- (II) Any operations of a political, exploratory, inaugural, transition, or legal defense committee; or
- (III) The campaign to obtain signatures on any initiative, referendum, or recall measure, or to bring about the ratification or defeat of any initiative, referendum, or recall measure, or any operations of a political committee involved in such a campaign;
 - (ii) A contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose;
 - (iii) A transfer of funds between political committees or between an exploratory committee and a political committee; or
 - (iv) The payment, by any person other than a candidate or a political, exploratory, inaugural, transition, or legal defense committee, of compensation for the personal services of another person that are rendered to such candidate or committee without charge, or for less than reasonable value, for any such purpose or the furnishing of goods, advertising, or services to a candidate's campaign without charge, or at a rate which is less than the rate normally charged for such services.
- (B) Notwithstanding subparagraph (A) of this paragraph, the term "contribution" shall not be construed to include:
 - (i) Services provided without compensation by a person (including an accountant or an attorney) volunteering a portion or all of the person's time on behalf of a candidate or a political, exploratory, inaugural, transition, or legal defense committee;
 - (ii) Personal services provided without compensation by a person volunteering a portion or all of the person's time to a candidate or a political, exploratory, inaugural, or legal defense committee;
 - (iii) Communications by an organization, other than a political party, solely to its members and their families on any subject;
 - (iv) Communications (including advertisements) to any person on any subject by any organization that is organized solely as an issue-oriented organization, which communications neither endorse nor oppose any candidate for office;
 - (v) Normal billing credit for a period not exceeding 30 days;
 - (vi) Services of an informational or polling nature, and related thereto, designed to seek the opinion(s) of voters concerning the possible candidacy of a qualified elector for public office, before such qualified elector's becoming a candidate;
 - (vii) The use of real or personal property, and the costs of invitations, food, and beverages voluntarily provided by a person to a candidate in rendering voluntary personal services on the person's residential premises for related activities; provided, that expenses do not exceed \$500 with respect to the candidate's election; and
 - (viii) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if the charge for use in a candidate's campaign is at least equal to the cost of such food or beverage to the vendor; provided, that expenses do not exceed \$500 with respect to the candidate's election.

(11) "Direct and predictable effect" means there is:

(A) A close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest;

(B) A real, as opposed to a speculative possibility, that the matter will affect the financial interest; and

(C) The effect is more than de minimis.

(12) "Director of Campaign Finance" means the Director of Campaign Finance of the Elections Board created by § 1-1163.02.

(13) "Director of Government Ethics" means the Director of Government Ethics created by § 1-1162.06.

(14) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(15) "Election" means a primary, general, or special election held in the District of Columbia for the purpose of nominating an individual to be a candidate for election to office, or for the purpose of electing a candidate to office, or for the purpose of deciding an initiative, referendum, or recall measure, and includes a convention or caucus of a political party held for the purpose of nominating such a candidate.

(16) "Election Code" means subchapter I of Chapter 10 of this title [§ 1-1001.01 et seq.].

(17) "Elections Board" means the District of Columbia Board of Elections established under the Election Code, and redesignated by § 1-1163.05.

(18) "Employee" means, unless otherwise apparent from the context, a person who performs a function of the District government and who receives compensation for the performance of such services, or a member of a District government board or commission, whether or not for compensation.

(19) "Ethics Board" means the District of Columbia Board of Ethics and Government Accountability established by § 1-1162.02.

(20) "Executive agency" means:

(A) A department, agency, or office in the executive branch of the District government under the direct administrative control of the Mayor;

(B) The State Board of Education or any of its constituent elements;

(C) The University of the District of Columbia or any of its constituent elements;

(D) The Elections Board; and

(E) Any District professional licensing and examining board under the administrative control of the executive branch.

(21)(A) "Expenditure" means:

(i) A purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of financing, directly or indirectly,:

(I) The election campaign of a candidate;

(II) Any operations of a political, exploratory, inaugural, transition, or legal defense committee; or

(III) The election campaign to obtain signatures on any initiative, referendum, or recall petition, or to bring about the ratification or defeat of any initiative, referendum, or recall measure, or any operations of a political committee involved in such a campaign;

(ii) A contract, promise, or agreement, whether or not legally enforceable, to make an expenditure;

(iii) A transfer of funds between political committees or between an exploratory committee and a political committee; and

(B) Notwithstanding subparagraph (A) of this paragraph, the term “expenditure” shall not be construed to include the incidental expenses (as defined by the Elections Board or Ethics Board) made by or on behalf of a person in the course of volunteering that person’s time on behalf of a candidate or a political, exploratory, inaugural, transition, or legal defense committee or the use of real or personal property and the cost of invitations, food, or beverages voluntarily provided by a person to a candidate in rendering voluntary personal services on the person’s residential premises for candidate-related activity if the aggregate value of such activities by such person on behalf of any candidate does not exceed \$500 with respect to any election.

(22) “Exploratory committee” means any person, or group of persons, organized for the purpose of examining or exploring the feasibility of becoming a candidate for an elective office in the District.

(23) “Gift” means a payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, unless consideration of equal or greater value is received. The term “gift” shall not include:

(A) A political contribution otherwise reported as required by law;

(B) A commercially reasonable loan made in the ordinary course of business; or

(C) A gift received from a member of the person’s immediate family.

(24) “Home Rule Act” means Chapter 2 of this title [§ 1-201.01 et seq.].

(25) “Household” means a public official or employee and any member of his or her immediate family with whom the public official or employee resides.

(26) “Immediate family” means the spouse or domestic partner of a public official or employee and any parent, grandparent, brother, sister, or child of the public official or employee, and the spouse or domestic partner of any such parent, grandparent, brother, sister, or child.

(27) “Inaugural committee” means a person, or group of persons, organized for the purpose of soliciting, accepting, and spending funds and coordinating activities to celebrate the election of a new Mayor.

(28) “Income” means gross income as defined in section 61 of the Internal Revenue Code (26 U.S.C. § 61).

(29) “Internal Revenue Code” means the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 3; 26 U.S.C. § 1 et seq.), and the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 et seq.), as amended from time to time.

(30) “Legal defense committee” means a person or group of persons, organized for the purpose of soliciting, accepting, and expending funds to defray the professional fees and costs for a public official’s legal defense to one or more civil, criminal, or administrative proceedings.

(31) “Legislative action” includes any activity conducted by an official in the legislative branch in the course of carrying out his or her duties as such an official, and relating to the introduction, passage, or defeat of any legislation in the Council.

(32)(A) "Lobbying" means communicating directly with any official in the legislative or executive branch of the District government with the purpose of influencing any legislative action or an administrative decision.

(B) The term "lobbying" shall not include:

(i) The appearance or presentation of written testimony by a person on his or her own behalf, or representation by an attorney on behalf of any such person in a rulemaking (which includes a formal public hearing), rate-making, or adjudicatory hearing before an executive agency or the Tax Assessor;

(ii) Information supplied in response to written inquiries by an executive agency, the Council, or any public official;

(iii) Inquiries concerning only the status of specific actions by an executive agency or the Council;

(iv) Testimony given before the Council or a committee of the Council, during which a public record is made of such proceedings or testimony submitted for inclusion in such a public record;

(v) A communication made through the instrumentality of a newspaper, television, or radio of general circulation, or a publication whose primary audience is the organization's membership; and

(vi) Communications by a bona fide political party.

(33)(A) "Lobbyist" means any person who engages in lobbying.

(B) Public officials communicating directly or soliciting others to communicate with other public officials shall not be deemed lobbyists for the purposes of this chapter; provided, that a public official does not receive compensation in addition to his or her salary for such communication or solicitation and makes such communication and solicitation in his or her official capacity.

(34) "Merit Personnel Act" means Chapter 6 of this title [§ 1-601.01 et seq.].

(35) "Office" means the office of Mayor, Attorney General, Chairman of the Council, member of the Council, member of the State Board of Education, or an official of a political party.

(36) "Official in the executive branch" means:

(A) The Mayor;

(B) Any officer or employee in the Executive Service;

(C) Persons employed under the authority of §§ 1-609.01 through 1-609.03 (except § 1-609.03(a)(3)) paid at a rate of DS-13 or above in the General Schedule or equivalent compensation under the provisions of subchapter XI of Chapter 6 of this title [§ 1-611.01 et seq.] or designated in § 1-609.08 (except paragraphs (9) and (10) of that section; or

(D) Members of boards and commissions designated in § 1-523.01(e).

(37) "Official in the legislative branch" means any candidate for Chairman or member of the Council in a primary, special, or general election, the Chairman or Chairman-elect or any member or member-elect of the Council, officers, and employees of the Council appointed under the authority of §§ 1-609.01 through 1-609.03 or designated in § 1-609.08.

(38) "Official of a political party" means:

(A) National committeemen and national committeewomen;

(B) Delegates to conventions of political parties nominating candidates for the Presidency and Vice Presidency of the United States;

(C) Alternates to the officials referred to in subparagraphs (A) and (B) of this paragraph, where permitted by political party rules; and

(D) Such members and officials of local committees of political parties as may be designated by the duly authorized local committees of such parties for election, by public ballot, at large or by ward in the District.

(39) "Open Government Office" means the District of Columbia Open Government Office established by § 2-592.

(40) "Open Meetings Act" means subchapter IV of Chapter 5 of Title 2 [§ 2-571 et seq.].

(41) "Particular matter" is limited to meaning a deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons.

(42) "Person" means an individual, partnership, committee, corporation, labor organization, and any other organization.

(43) "Person closely affiliated with the employee" means a spouse, dependent child, general partner, a member of the employee's household, or an affiliated organization.

(44) "Political committee" means any proposer, individual, committee (including a principal campaign committee), club, association, organization, or other group of individuals organized for the purpose of, or engaged in promoting or opposing:

(A) A political party;

(B) The nomination or election of a person to office; or

(C) Any initiative, referendum, or recall.

(45) "Political party" means an association, committee, or organization that nominates a candidate for election to any office and qualifies under subchapter I of Chapter 10 of this title [§ 1-1001.01 et seq.] to have the names of its nominees appear on the election ballot as the candidate of that association, committee, or organization.

(46) "Prohibited source" means any person that:

(A) Has or is seeking to obtain contractual or other business or financial relations with the District government;

(B) Conducts operations or activities that are subject to regulation by the District government; or

(C) Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities.

(47) "Public official" means:

(A) A candidate for nomination for election, or election, to public office;

(B) The Mayor, Chairman, and each member of the Council of the District of Columbia holding office under Chapter 2 of this title;

(C) The Attorney General;

(D) A Representative or Senator elected pursuant to § 1-123;

(E) An Advisory Neighborhood Commissioner;

(F) A member of the State Board of Education;

(G) A person serving as a subordinate agency head in a position designated as within the Executive Service;

(H) A member of a board or commission listed in § 1-523.01(e); and

(I) A District of Columbia Excepted Service employee paid at a rate of Excepted Service 9 or above, or its equivalent, who makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest; and any additional employees designated by rule by the Ethics Board who make decisions or participate substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or act in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest.

(48) “Registrant” means a person who is required to register as a lobbyist under the provisions of § 1-1162.27.

(49) “Security” means a security as defined in section 2(1) of the Securities Act of 1933, approved May 27, 1933 (48 Stat. 74; 15 U.S.C. § 77b(1)).

(50) “Tax” means the taxes imposed under Chapter 1 of the Internal Revenue Code, under Chapter 18 of Title 47, and under the District of Columbia Public Works Act of 1954, approved May 18, 1954 (68 Stat. 101; D.C. Official Codes § 34-2101 *passim*); and any other provision of law relating to the taxation of property within the District.

(51) “Transactions in securities or commodities” means any acquisition, holding, withholding, use, transfer, or other disposition involving any security or commodity.

(52) “Transition committee” means any person, or group of persons, organized for the purpose of soliciting, accepting, or expending funds for office and personnel transition on behalf of the Chairman of the Council or the Mayor.

(Apr. 27, 2012, D.C. Law 19-124, § 101, 59 DCR 1862.)

Legislative history of Law 19-124. — Law 19-124, the “Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011”, was introduced in Council and assigned Bill No. 19-511, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 6, 2011, and December 20, 2011, respectively. Signed by the Mayor on February 27, 2012, it was assigned Act No. 19-318 and trans-

mitted to both Houses of Congress for its review. D.C. Law 19-124 became effective on April 27, 2012.

References in text. — The District of Columbia Public Works Act of 1954, referenced in paragraph (50) of this section, is primarily codified at § 9-101.16, subchapter I of Chapter 21 of Title 34, Chapter 23 of Title 34, §§ 34-2401.04, 34-2401.25, and 34-2405.02, subchapter IV of Chapter 24 of Title 34, and § 50-1501.02 and 50-1501.03.

Subchapter II. Ethics Act.

§ 1-1162.01. Short title.

This subchapter may be cited as the “Government Ethics Act of 2011”.

(Apr. 27, 2012, D.C. Law 19-124, § 201, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

Part A

DISTRICT OF COLUMBIA BOARD OF ETHICS AND
GOVERNMENT ACCOUNTABILITY ESTABLISHMENT.

§ 1-1162.02. Establishment of the District of Columbia Board of Ethics and Government Accountability.

(a) There is established a District of Columbia Board of Ethics and Government Accountability, whose purpose shall be to:

- (1) Administer and enforce the Code of Conduct;
- (2) Appoint a Director of the Open Government Office;
- (3) Appoint a Director of the Ethics Board;
- (4) Receive, investigate, and adjudicate violations of the Code of Conduct;
- (5) Conduct mandatory training on the Code of Conduct;
- (6) Produce ethics training materials, including summary guidelines for all applicable laws and regulations;
- (7) Produce a plain-language ethics guide;
- (8) Issue rules and regulations governing the ethical conduct of employees and public officials; and
- (9) Establish an anonymous and confidential telephone hotline for the purpose of receiving information related to violations of the Code of Conduct or other information with regard to the administration or enforcement of the Code of Conduct.

(b) The Ethics Board shall conduct a detailed assessment of ethical guidelines and requirements for employees and public officials to include a review of national best practices of government ethics law, and produce, within 240 days of April 27, 2012, recommendations for amending the Code of Conduct. Thereafter, the Ethics Board shall submit recommendations on December 31 of each year. The recommendations shall include:

- (1) Whether to adopt local laws that are similar in nature to federal ethics laws;
- (2) Whether to adopt post-employment restrictions;
- (3) Whether to adopt ethics laws pertaining to contracting and procurement;
- (4) Whether to adopt nepotism and cronyism prohibitions;
- (5) Whether to criminalize violations of ethics laws;
- (6) Whether to expel a member of the Council for certain violations of the Code of Conduct;
- (7) Whether to regulate campaign contributions from affiliated or subsidiary corporations; and

(8) Any other matter as determined by the Ethics Board.

(Apr. 27, 2012, D.C. Law 19-124, § 202, 59 DCR 1862.)

Emergency legislation. — For temporary (90 day) addition of section, see § 1073 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section,

see § 1073 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.03. Composition; term; qualifications; removal.

(a) The Ethics Board shall consist of 3 members, no more than 2 of whom shall be of the same political party, appointed by the Mayor, with the advice and consent of the Council. Members shall be appointed to serve for terms of 6 years, except the members first appointed. Of the members first appointed, one member shall be appointed to serve for a 2-year term, one member shall be appointed to serve for a 4-year term, and one member shall be appointed to serve for a 6-year term, as designated by the Mayor.

(b)(1) The Mayor shall submit a nomination for membership on the Ethics Board to the Council for a 45-day period of review, excluding days of Council recess. If the Council does not approve or disapprove the nomination, by resolution, within the 45-day review period, the nomination shall be deemed disapproved.

(2) Within 45 days of April 27, 2012, the Mayor shall submit to the Council for its review pursuant to paragraph (1) of this subsection the nominations for initial appointment to the Ethics Board.

(c) The Mayor shall designate the Chairman of the Ethics Board.

(d) Any person appointed to fill a vacancy on the Ethics Board shall be appointed only for the unexpired term of the member whose vacancy he or she is filling.

(e) A vacancy shall be noticed in the District of Columbia Register.

(f) A member may be reappointed, and, if not reappointed, the member may serve until the member's successor has been appointed and approved.

(g) When appointing and approving a member of the Ethics Board, the Mayor and Council shall consider whether the individual possesses demonstrated integrity, independence, and public credibility, and whether the individual has particular knowledge, training, or experience in government ethics or in public transparency.

(h) A person shall not be a member of the Ethics Board unless he or she:

(1) Is a duly registered voter;

(2) Has resided in the District continuously since the beginning of the one-year period ending on the day he or she is appointed; and

(3) Holds no other office or employment in the District government.

(i) An Ethics Board member shall not:

(1) Act as a leader or hold any office in a District political organization;

(2) Make speeches for a District political organization or candidate, or publicly endorse or oppose a District of Columbia candidate for public office;

(3) Solicit funds for, pay an assessment to, or make a contribution to a

District political organization or candidate, or attend or purchase a ticket for a dinner or other event sponsored by a District of Columbia political organization or candidate;

(4) Be a lobbyist;

(5) Use his or her status as a member to directly or indirectly attempt to influence any decision of the District government relating to any action that is not within the Ethics Board's purview; or

(6) During the member's tenure on the Ethics Board, be convicted of having committed a felony in the District of Columbia, or if the crime is committed elsewhere, convicted of an offense that would have been a felony if it had been committed in the District of Columbia.

(j) A member of the Ethics Board may be removed for good cause, including engaging in any activity prohibited by subsections (h) or (i) of this section, in accordance with the following procedure:

(1) When the Mayor believes that there is good cause to remove a member, the Mayor shall notify the member in writing by personal service or by certified or registered mail, setting out the alleged cause and advising the member that he or she has 7 days in which to request a hearing before the Council.

(2) If the member fails to request a hearing within 7 days after receiving the notice, the Mayor may remove the member and appoint a new member to serve until the expiration of the term of the member removed.

(3) If within 7 days of receiving notice from the Mayor, the member requests a hearing, the Mayor shall promptly notify the Council, and the Council shall convene the hearing within 30 calendar days after receiving notice from the Mayor that a member has requested a hearing.

(4) At the conclusion of the hearing, the Council shall vote on whether to remove the member. If $\frac{2}{3}$ rds of the Council votes to remove a member, the member shall be removed and the Mayor shall appoint a new member to serve until the expiration of the term of the member removed.

(5) If less than $\frac{2}{3}$ rds of the Council votes to remove a member, the member shall not be removed.

(Apr. 27, 2012, D.C. Law 19-124, § 203, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.04. Meetings.

(a) The Ethics Board shall hold regular monthly meetings in accordance with a schedule to be established by the Ethics Board. Additional meetings may be called as needed by the Ethics Board.

(b) The Ethics Board shall provide notice of meetings and shall conduct its meetings in compliance with subchapter IV of Chapter 5 of Title 2.

(Apr. 27, 2012, D.C. Law 19-124, § 204, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.05. Compensation.

(a) Each member of the Ethics Board, excluding the Chairman, shall receive compensation, as provided in § 1-611.08, while actually in the service of the Ethics Board, for a sum not to exceed \$12,500 per annum.

(b) The Chairman of the Ethics Board shall receive compensation, as provided in § 1-611.08, while actually in the service of the Ethics Board, for a sum not to exceed \$26,500 per annum.

(Apr. 27, 2012, D.C. Law 19-124, § 205, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.06. Professional staff.

(a) The Ethics Board shall select, employ, and fix the compensation for a Director of Government Ethics and such staff as the Ethics Board considers necessary, subject to the pay limitations of § 1-611.16. The Director of Government Ethics shall serve at the pleasure of the Ethics Board. The Ethics Board shall provide to the Director of Government Ethics employees to carry out the powers and duties of the Director of Government Ethics. Employees assigned to the Director of Government Ethics, while so assigned, shall be under the direction and control of the Director of Government Ethics and may not be reassigned without the concurrence of the Director of Government Ethics.

(b) The Director of Government Ethics shall be a District resident and failure to maintain District residency shall result in forfeiture of the position.

(c) The staff of the Ethics Board shall be subject to the Code of Conduct, and the Ethics Board shall promulgate such regulations as may be necessary to ensure that all persons responsible for the proper administration of this subchapter maintain a position of strict impartiality and refrain from any activity that would imply support or opposition to an Ethics Board investigation.

(Apr. 27, 2012, D.C. Law 19-124, § 206, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.07. Budget.

(a) The Director of Government Ethics, with approval by the Ethics Board, shall prepare and submit to the Mayor, for inclusion in the annual budget of the District of Columbia under part D of subchapter IV of Chapter 2 of this title [§ 1-204.41 et seq.] for the year, annual estimates of the expenditures and

appropriations necessary for the operation of the Ethics Board for the year. All such estimates shall be forwarded by the Mayor to the Council for its action pursuant to §§ 1-204.46 and 1-206.03(c), in addition to the Mayor's recommendations.

(b) Before Fiscal Year 2013, upon the request of any member of the Ethics Board, the Mayor shall provide the Ethics Board with suitable office space in a publicly owned or leased building for the administration and enforcement of this subchapter. Furnishings, information technology services and equipment, and supplies to this office space shall also be provided upon request.

(Apr. 27, 2012, D.C. Law 19-124, § 207, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.08. Quorum; delegation.

(a) Two members of the Ethics Board shall constitute a quorum for the transaction of business.

(b) The Ethics Board may delegate to an individual member or to the Director of Government Ethics its power to investigate or hold a hearing.

(Apr. 27, 2012, D.C. Law 19-124, § 208, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.09. Rules.

The Ethics Board, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this subchapter, including rules for the administration of preliminary investigations, formal investigations, and hearings related to violations of the Code of Conduct or other provisions of this subchapter.

(Apr. 27, 2012, D.C. Law 19-124, § 209, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.10. Board of Ethics and Government Accountability Fund.

(a) There is established as a nonlapsing fund the Board of Ethics and Government Accountability Fund ("Accountability Fund"), which shall be administered by the Ethics Board. The funds in the Accountability Fund shall be used exclusively by the Ethics Board. All fines collected under § 1-1162.21 and part E of this subchapter shall be deposited into the Accountability Fund.

(b) All funds deposited into the Accountability Fund, and any interest

earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in this subchapter without regard to fiscal year limitation, subject to authorization by Congress.

(Apr. 27, 2012, D.C. Law 19-124, § 210, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

Part B

DIRECTOR OF GOVERNMENT ETHICS.

§ 1-1162.11. Powers of the Director of Government Ethics.

The Director of Government Ethics, approved by the Ethics Board, shall have the power to:

(1) Require any person to submit, within a reasonable period and under oath or otherwise as the Director of Government Ethics may determine, written reports and answers to questions that the Director of Government Ethics may propound relating to the administration and enforcement of this subchapter;

(2) Administer oaths;

(3) Require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of the Ethics Board's duties; provided, that subpoenas issued under this paragraph shall be issued by the Director of Government Ethics only upon approval of a majority of the Ethics Board and served either personally or by certified or registered mail;

(4) Order testimony to be taken by deposition in a proceeding or investigation before any person who is designated by the Director of Government Ethics and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under this section;

(5) Pay witnesses the same fees and mileage as are paid in like circumstances in the Superior Court of the District of Columbia;

(6) Institute or conduct, on the Director of Government Ethics' own motion, a preliminary investigation into alleged violations of the Code of Conduct or other violations of this subchapter;

(7) Retain, on a temporary basis, consultants, including attorneys or others, on a pro bono basis, as necessary to administer and enforce this subchapter; and

(8) Require any person to submit through an electronic format or medium a report required pursuant to this subchapter.

(Apr. 27, 2012, D.C. Law 19-124, § 211, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.12. Preliminary investigations.

(a) The Director of Government Ethics shall conduct a preliminary investigation of a possible violation the Code of Conduct or of this subchapter brought to the attention of the Director of Government Ethics or the Ethics Board through the following sources:

- (1) The media;
- (2) A tip received through the hotline; or
- (3) Documents filed with the Ethics Board.

(b) If during or after the preliminary investigation, the Director of Government Ethics has reason to believe that a violation of the Code of Conduct or of this subchapter may have occurred, the Director of Government Ethics shall present evidence of the violation to the Ethics Board. Upon presentation of evidence, the Ethics Board may authorize a formal investigation and the issuance of subpoenas if it finds reason to believe a violation has occurred.

(c) A preliminary investigation may be dismissed by the Director of Government Ethics or the Ethics Board if insufficient evidence exists to support a reasonable belief that a violation has occurred.

(d) The identity of an individual who is the subject of the preliminary investigation shall not be disclosed without the individual's consent unless or until the Ethics Board has found reason to believe that the individual has committed a violation and the Ethics Board finds that disclosure would not harm the investigation.

(Apr. 27, 2012, D.C. Law 19-124, § 212, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.13. Formal investigation.

(a) A formal investigation shall be initiated upon:

- (1) Receipt of a written complaint transmitted to the Ethics Board;
- (2) A finding by the Office of the Inspector General or District of Columbia Auditor of waste, fraud, abuse of government resources, or a violation of the Code of Conduct; or
- (3) A finding by a court of competent jurisdiction of liability in a civil proceeding, indictment, or information in a criminal proceeding with respect to acts or offenses that may constitute violations of the Code of Conduct or of this subchapter.

(b) A written complaint shall include:

- (1) The full name and address of the complainant and the respondent;
- (2) A clear and concise statement of facts that are alleged to constitute a violation of the Code of Conduct or of this subchapter;
- (3) The complainant's signature;

(4) A verification of the complaint under oath; and

(5) Supporting documentation, if any.

(c) No complaint may be made under this subchapter later than 5 years after the discovery of the alleged violation.

(d) An individual making a complaint shall be afforded all available protections from adverse employment action or retaliation in accordance with Chapter 6 of this title and subchapter XII of Chapter 2 of Title 2 [§ 2-223.01 et seq.].

(e) Within 14 days of the initiation of a formal investigation, the Director of Government Ethics shall cause evidence concerning the complaint to be presented to the Ethics Board. If the Ethics Board decides that there is reasonable belief that a violation has occurred, the Ethics Board may authorize the issuance of subpoenas.

(Apr. 27, 2012, D.C. Law 19-124, § 213, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.14. Hearings.

(a)(1) After determining that there is reason to believe a violation has occurred based upon the presentation of evidence by the Director of Government Ethics pursuant to § 1-1162.12(b) or § 1-1162.13(e), the Ethics Board shall conduct an open and adversarial hearing at which the Director of Government Ethics shall present evidence of the violation. A hearing need not be conducted if a matter is dismissed pursuant to § 1-1162.16(a).

(2) If the Director of Government Ethics fails to present a matter, or advises the Ethics Board that insufficient evidence exists to present a matter or that an additional period of time is needed to investigate a matter further, the Ethics Board may order the Director of Government Ethics to present the matter as provided in paragraph (1) of this subsection.

(b) Any hearing under this section shall be of record and shall be held in accordance with Chapter 5 of Title 2.

(c) Any witness has a right to refuse to answer a question that might tend to incriminate the witness by claiming his or her Fifth Amendment privilege against self-incrimination.

(Apr. 27, 2012, D.C. Law 19-124, § 214, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.15. Disposition.

(a) Following the presentation of evidence to the Ethics Board by the Director of Government Ethics in an adversary proceeding and an open hearing, the Ethics Board may:

(1) Levy a penalty in accordance with § 1-1162.21;

(2) Refer the matter to the United States Attorney for the District of Columbia for enforcement or prosecution;

(3) Refer the matter to the Attorney General of the District of Columbia for enforcement or prosecution; or

(4) Dismiss the action.

(b) The Ethics Board may not refer information concerning an alleged violation of the Code of Conduct or of this subchapter to the United States Attorney for the District of Columbia or the Attorney General of the District of Columbia without the presentation of evidence by the Director of Government Ethics as provided in § 1-1162.14(a).

(Apr. 27, 2012, D.C. Law 19-124, § 215, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.16. Dismissal of meritless claim, complaint, or request for investigation.

(a) The Ethics Board may dismiss, at any stage of the proceedings, any claim, complaint, request for investigation, investigation, or portion of an investigation that the Ethics Board finds to be without merit.

(b) The Ethics Board may require a person who made or caused to be made a claim, complaint, or request for investigation in bad faith and without merit to pay reasonable fees for time spent reviewing or investigating the claim, complaint, or requests for investigation.

(Apr. 27, 2012, D.C. Law 19-124, § 216, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.17. Appeals.

Appeals of any order or fine made by the Ethics Board in accordance with this subchapter shall be made to the Superior Court of the District of Columbia.

(Apr. 27, 2012, D.C. Law 19-124, § 217, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.18. Enforcement of subpoena.

The Superior Court of the District of Columbia may, upon petition by the Ethics Board, in case of refusal to obey a subpoena or order of the Ethics Board issued under § 1-1162.11(3), issue an order requiring compliance; and any failure to obey the order of the court may be treated by the court as contempt.

(Apr. 27, 2012, D.C. Law 19-124, § 218, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.19. Advisory opinions.

(a) Upon application made by an employee or public official subject to the Code of Conduct, the Ethics Board or the Director of Government Ethics shall, within a reasonable period of time, provide an advisory opinion as to whether a specific transaction or activity inquired of would constitute a violation of a provision of the Code of Conduct over which the Ethics Board has primary jurisdiction.

(b) An advisory opinion shall be published in the District of Columbia Register within 30 days of its issuance; provided, that the identity of a person requesting an advisory opinion shall not be disclosed in the District of Columbia Register without the person's prior consent in writing.

(c) If issued by the Director of Government Ethics, an advisory opinion may be appealed for consideration by the Ethics Board.

(d) There shall be no enforcement of a violation of the Code of Conduct taken against an employee or public official who relied in good faith upon an advisory opinion requested by that employee or public official; provided, that the employee or public official, in seeking the advisory opinion, made full and accurate disclosure of all relevant circumstances and information.

(Apr. 27, 2012, D.C. Law 19-124, § 219, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.20. Reports.

(a) The Director of Government Ethics shall produce a quarterly report detailing:

- (1) The posture of each complaint it received, including whether an investigation was initiated, is ongoing, or has concluded;
- (2) The referrals made to and from the Ethics Board;
- (3) Fines and penalties imposed by the Ethics Board;
- (4) Allegations dismissed by the Ethics Board; and
- (5) Other action taken with regard to an allegation of a violation of the Code of Conduct.

(b) The quarterly report shall be posted online.

(Apr. 27, 2012, D.C. Law 19-124, § 220, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.21. Penalties.

(a)(1) In accordance with paragraph (2) of this subsection and except as provided in subsection (b) of this section, the Ethics Board may assess a civil penalty for a violation of the Code of Conduct of not more than \$5,000 per violation, or 3 times the amount of an unlawful contribution, expenditure, gift, honorarium, or receipt of outside income for each violation. Each occurrence of a violation of this subchapter and each day of noncompliance with a requirement of this subchapter or an order of the Ethics Board shall constitute a separate offense.

(2) A civil penalty shall be assessed by the Ethics Board by order only after the person charged with a violation has been given an opportunity for a hearing, and after the Ethics Board has determined, by a decision incorporating its findings of facts, that a violation occurred.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, the Ethics Board may issue a schedule of fines for violations of this subchapter, which may be imposed ministerially by the Director of Government Ethics. A civil penalty imposed under the authority of this paragraph may be appealed to the Ethics Board in accordance with the provisions of paragraph (2) of this subsection. The aggregate set of penalties imposed against each person under the authority of this paragraph may not exceed \$5,000.

(4) In addition to any civil penalty imposed under this subchapter, a violation of the Code of Conduct may result in remedial action in accordance with Chapter 6 of this title.

(5)(A) If the person against whom a civil penalty is assessed fails to pay the penalty, the Ethics Board may file a petition for enforcement of its order assessing the penalty in the Superior Court of the District of Columbia. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall be sent by registered or certified mail to the respondent and the respondent's attorney of record, if any, and the Ethics Board shall certify and file with the court the record upon which the order sought to be enforced was issued.

(B) The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order and the decision of the Ethics Board or it may remand the proceedings to the Ethics Board for such further action as it may direct. The court may determine de novo all issues of law, but the Ethics Board's findings of fact, if supported by substantial evidence, shall be conclusive.

(b)(1) Any person who commits a violation of the Code of Conduct that substantially threatens the public trust shall be fined not more than \$25,000, or shall be imprisoned for not longer than one year, but not both.

(2)(A) Prosecutions of violations of this subsection shall be brought by the Attorney General of the District of Columbia; provided, that if the conduct also violates criminal provisions that could be prosecuted by the United States Attorney of the District of Columbia, the United States Attorney of the District of Columbia consents to the prosecution by the Attorney General of the District of Columbia.

(B) Notwithstanding subparagraph (A) of this paragraph, no prosecution for a violation of paragraph (1) of this subsection shall be made until the Ethics Board has conducted its study pursuant to § 1-1162.02(b) and the Council has, by law, specified violations of the Code of Conduct that substantially threaten the public trust.

(c) The provisions of this subchapter shall in no manner limit the authority of the United States Attorney for the District of Columbia.

(d) All actions of the Ethics Board, the Attorney General of the District of Columbia, or of the United States Attorney for the District of Columbia to enforce the provisions of this subchapter must be initiated within 5 years of the discovery of the alleged violation.

(e) Notwithstanding any other provision in this subchapter, all equitable remedies at law shall be available for violations of the Code of Conduct, which may be in addition to any civil penalty prescribed in this subchapter.

(f) The penalties set forth in this section shall not apply to part E of this subchapter.

(Apr. 27, 2012, D.C. Law 19-124, § 221, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.22. Additional penalties for public officials.

(a) In addition to the penalties set forth in § 1-1162.21, the Ethics Board may censure a public official for a violation of the Code of Conduct that the Ethics Board finds to substantially threaten the public trust.

(b) The Ethics Board may recommend in such censure that the Council suspend or remove a Councilmember's committee chairmanship, if any, committee membership, if any, or vote in any committee.

(Apr. 27, 2012, D.C. Law 19-124, § 222, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

Part C

CONFLICTS OF INTEREST.

§ 1-1162.23. Conflicts of interest.

(a) No employee shall use his or her official position or title, or personally and substantially participate, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, or attempt to influence the outcome of a particular matter, in a manner

that the employee knows is likely to have a direct and predictable effect on the employee's financial interests or the financial interests of a person closely affiliated with the employee.

(b) An employee other than an elected official may seek a waiver, and the prohibition in subsection (a) of this section shall not apply, if the employee:

(1) Advises the employee's supervisor and the Ethics Board of the nature and circumstances of the particular matter;

(2) Makes full disclosure of the financial interest; and

(3) Receives in advance a written determination made by both the supervisor and the Ethics Board that:

(A) The interest is not so substantial as to be deemed likely to affect the integrity of the services that the government may expect from the employee; or

(B) Another legally cognizable basis for waiver exists.

(c)(1) Any elected official who, in the discharge of the elected official's official duties, would be required to act in any matter prohibited under subsection (a) of this section shall make full disclosure of the financial interest, prepare a written statement describing the matter and the nature of the potential conflict of interest, and deliver the statement to:

(A) In the case of a member of the Council, the Council Chairman; or

(B) In the case of an elected official other than a member of the Council, the Ethics Board.

(2) Any employee other than an elected official who, in the discharge of the employee's official duties, would be required to act in any matter prohibited under subsection (a) of this section shall:

(A) Make full disclosure of the financial interest;

(B) Prepare a written statement describing the matter and the nature of the potential conflict of interest; and

(C) Deliver the statement to the employee's supervisor and to the Ethics Board.

(3) During a proceeding in which an elected official would be required to take action in any matter that is prohibited under subsection (a) of this section, the Chairman shall:

(A) Read the statement provided in paragraph (1) of this subsection into the record of proceedings; and

(B) Excuse the elected official from votes, deliberations, and other actions on the matter.

(4) No Councilmember excused from votes, deliberations, or other actions on a matter shall in any way participate in or attempt to influence the outcome of the particular matter, in a manner that is likely to have a direct and predictable effect on the employee's financial interests or the financial interests of a person closely affiliated with the employee.

(5) Upon receipt of the statement provided in paragraph (2) of this subsection, the employee's supervisor shall assign the matter to another employee who does not have a potential conflict of interest.

(d)(1) An employee shall not receive any compensation, salary, or contribution to salary, gratuity, or any other thing of value from a source other than the District government for the employee's performance of official duties.

(2) No employee or member of the employee's household may knowingly acquire:

(A) Stocks, bonds, commodities, real estate, or other property, whether held individually or jointly, the acquisition of which could unduly influence or give the appearance of unduly influencing the employee in the conduct of his or her official duties and responsibilities; or

(B) An interest in a business or commercial enterprise that is related directly to the employee's official duties, or which might otherwise be involved in an official action taken or recommended by the employee, or which is related to matters over which the employee could wield any influence, official or otherwise.

(Apr. 27, 2012, D.C. Law 19-124, § 223, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

Part D

FINANCIAL DISCLOSURES AND HONORARIA.

§ 1-1162.24. Public reporting.

(a)(1) Public officials, except Advisory Neighborhood Commissioners, shall file annually with the Ethics Board a public report containing a full and complete statement of:

(A) The name of each business entity, including sole proprietorships, partnerships, trusts, nonprofit organizations, and corporations, whether or not transacting any business with the District of Columbia government, in or from which the public official or his or her spouse, domestic partner, or dependent children:

(i) Has a beneficial interest, including, whether held in such person's own name, in trust, or in the name of a nominee, securities, stocks, stock options, bonds, or trusts, exceeding in the aggregate \$1,000, or that produced income of \$200;

(ii) Receives honoraria and income earned for services rendered in excess of \$200 during a calendar year, as well as the identity of any client for whom the official performed a service in connection with the official's outside income if the client has a contract with the government of the District of Columbia or the client stands to gain a direct financial benefit from legislation that was pending before the Council during the calendar year. The report required by this part shall include a narrative description of the nature of the service performed in connection with the official's outside income;

(iii) Serves as an officer, director, partner, employee, consultant, contractor, volunteer, or in any other formal capacity or affiliation; or

(iv) Has an agreement or arrangement for a leave of absence, future employment, including date of agreement, or continuation of payment by a former employer;

(B) Any outstanding individual liability in excess of \$1,000 for borrowing by the public official or his or her spouse, domestic partner, or dependent children from anyone other than a federal or state insured or regulated financial institution, including any revolving credit and installment accounts from any business enterprise regularly engaged in the business of providing revolving credit or installment accounts, or a member of the person's immediate family;

(C) All real property located in the District (and its actual location) in which the public official or his or her spouse, domestic partner, or dependent children, has an interest with a fair market value in excess of \$1,000, or that produced income of \$200; provided, that this provision shall not apply to personal residences occupied by the public official, his or her spouse, or domestic partner;

(D) All professional or occupational licenses issued by the District of Columbia government held by a public official or his or her spouse, domestic partner, or dependent children;

(E) All gifts received year by a public official from a prohibited source in an aggregate value of \$100 in a calendar;

(F) An affidavit stating that the public official has not caused title to property to be placed in another person or entity for the purposes of avoiding the disclosure requirements of this subsection; and

(G) A certification that the public official has:

(i) Filed and paid his or her income and property taxes;

(ii) Diligently safeguarded the assets of the taxpayers and the District;

(iii) Reported known illegal activity, including attempted bribes, to the appropriate authorities;

(iv) Not been offered or accepted any bribes;

(v) Not directly or indirectly received government funds through illegal or improper means;

(vi) Not raised or received funds in violation of federal or District law; and

(vii) Not received or been given anything of value, including a gift, favor, service, loan gratuity, discount, hospitality, political contribution, or promise of future employment, based on any understanding that the public official's official actions or judgment or vote would be influenced.

(2) The Ethics Board may, on a case-by-case basis, exempt a public official from this requirement or some portion of this requirement for good cause shown.

(b) Except as otherwise provided by this section, all papers filed under this section shall be kept by the Ethics Board in the custody of the Director of Government Ethics for no less than 6 years. The Ethics Board shall publicly disclose before the 2nd day of June each year the names of the candidates, officers, and employees who have filed a report. The Director of Government Ethics shall dispose of papers filed pursuant to this section in accordance with Chapter 17 of Title 2.

(c) Reports required by this section shall be filed before October 2nd of each year. If a public official ceases before October 1st to hold the office or position,

the occupancy of which imposes upon him or her the reporting requirements set forth in subsection (a) of this section, the public official shall file the report within 3 months after leaving the office or position. The Ethics Board shall publish, in the District of Columbia Register, before November 2nd each year, the name of each public official who has:

- (1) Filed a report under this section;
- (2) Sought and received an extension of the deadline filing requirement and the reason for the extension; and
- (3) Not filed a report and the reason for not filing, if known.

(d) Reports required by this section shall be in a form prescribed by the Ethics Board. The Ethics Board may provide for the grouping of items of income, sources of income, assets, liabilities, dealings in securities or commodities, and purchases and sales of real property, when separate itemization is not feasible or is not necessary for an accurate disclosure of the income, net worth, dealing in securities and commodities, or purchases and sales of rental property of any individual.

(e) All reports filed under this section shall be maintained by the Ethics Board as public records.

(f) For the purposes of a report required by this section, a person shall be considered to have been a public official if he or she has served as a public official for more than 30 days during any calendar year in a position for which reports are required under this section.

(g) The Ethics Board shall provide for the annual auditing of all reports filed pursuant to this section.

(h) The Mayor shall develop a list of each business entity transacting any business with the District government, or providing a service to the District for consideration, to include the business name, address, principals, and brief summary of the business transacted within the immediately preceding 6 months. The list shall be available online and published on January 1st and July 1st annually.

(Apr. 27, 2012, D.C. Law 19-124, § 224, 59 DCR 1862.)

Emergency legislation. — For temporary (90 day) amendment of section, see § 1072(a) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section, see § 1074 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 1072(a) of Fiscal Year 2013 Budget

Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

For temporary (90 day) addition of section, see § 1074 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.25. Confidential disclosure of financial interest.

(a) Any employee, other than a public official, who advises, makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, policy-making, regulating, or auditing, or acts in areas of responsi-

bility that may create a conflict of interest or appearance of a conflict of interest, as determined by the appropriate agency head, shall file, before October 2nd of each year, with that agency head a report containing a full and complete statement of the information required by § 1-1162.24. Advisory Neighborhood Commissioners shall file the report required by this section.

(b) Upon review of the confidential report, any violation of the Code of Conduct found by the agency head shall be forwarded immediately to the Ethics Board for review.

(c) On or before September 1st of each year, each agency head shall designate the persons in the agency required to submit a confidential report by name, position, and grade level, and shall supply this list to the Ethics Board and the D.C. Ethics Counselor on or before September 15th of each year.

(Apr. 27, 2012, D.C. Law 19-124, § 225, 59 DCR 1862.)

Emergency legislation. — For temporary (90 day) amendment of section, see § 1072(b) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section, see § 1074 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 1072(b) of Fiscal Year 2013 Budget

Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

For temporary (90 day) addition of section, see § 1074 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.26. Limitations on honoraria and royalties.

(a) Except as provided in subsections (b) and (c) of this section, neither the Mayor, the Attorney General, the Chairman of the Council, nor any member of the Council or of the State Board of Education, nor any member of his or her immediate family, shall receive honoraria exceeding \$10,000 in the aggregate during any calendar year. For the purposes of this subsection, the term “honorarium” means payment of money or anything of value for an appearance, speech, or article; provided, that a reimbursement for or payment of actual and necessary travel expenses incurred shall not be considered honoraria. For the purposes of computing the \$10,000 limit on honoraria established under this subsection, an honorarium shall be considered received in the year in which the right to receive the honorarium accrues.

(b) Except as provided in subsection (c) of this section, neither the Mayor, the Chairman of the Council, nor any member of the Mayor’s or of the Chairman of the Council’s immediate family shall accept royalties for works of the Mayor or of the Chairman of the Council that exceed \$10,000 in the aggregate during any calendar year. For the purposes of computing the limit on royalties established under this subsection, a royalty shall be considered received during the calendar year in which the right to receive the royalty accrues.

(c) For the purposes of this section, any royalty or part of a royalty, or any honorarium or part of an honorarium paid to a charitable organization by or on behalf of a public official shall not be calculated as part of an aggregate total.

(Apr. 27, 2012, D.C. Law 19-124, § 226, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

Part E

LOBBYISTS.

§ 1-1162.27. Persons required to register.

(a) Except as provided in § 1-1162.28, a person shall register with the Director of Government Ethics pursuant to § 1-1162.29 and pay the required registration fee if the person receives compensation or expends funds in an amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying. A person who receives compensation from more than one source shall register under this section if the person receives an aggregate amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying. Failure to register as required by this section shall result in a civil penalty.

(b)(1) Except as provided in paragraph (2) of this subsection, the registration fee for lobbyists shall be \$250.

(2) The registration fee for lobbyists who lobby solely for nonprofit organizations shall be \$50.

(c)(1) There is established as a nonlapsing fund the Lobbyist Administration and Enforcement Fund (“Lobbyist Fund”), which shall be administered by the Ethics Board. The funds in the Lobbyist Fund shall be used by the Ethics Board solely for the purpose of administering and enforcing this subchapter.

(2) All fees collected under subsection (b) of this section by the Ethics Board shall be deposited into the Lobbyist Fund. All funds deposited into the Lobbyist Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in paragraph (1) of this subsection without regard to fiscal year limitation, subject to authorization by Congress.

(Apr. 27, 2012, D.C. Law 19-124, § 227, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.28. Exceptions.

(a) A person need not register with the Director pursuant to § 1-1162.29 if the person is:

(1) A public official, or an employee of the United States acting in his or her official capacity;

(2) A publisher or working member of the press, radio, or television who,

in the ordinary course of business, disseminates news or editorial comment to the general public;

(3) A candidate, member, or member-elect of an Advisory Neighborhood Commission; or

(4) An entity specified in § 47-1802.01(4), whose activities do not consist of lobbying, the result of which shall inure to the financial gain or benefit of the entity.

(b) Any person who is exempt from registration under any provision of this section, except a person exempt from registration under the provisions of subsection (a)(1) of this section, may be a registrant for other purposes under this part; provided, that no activity engaged in by the person shall constitute a conflict of interest under the provisions of § 1-1162.23. Registrants have no obligation to report activities in furtherance of exempt activities under this section in activity reports required under § 1-1162.30.

(Apr. 27, 2012, D.C. Law 19-124, § 228, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.29. Registration form.

(a) Each registrant shall file a registration form with the Director of Government Ethics, signed under oath, on or before January 15th of each year, or no later than 15 days after becoming a lobbyist (and on or before January 15th of each year thereafter). If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form. A registrant shall file a separate registration form for each person from whom he or she receives compensation.

(b)(1) The registration shall be on a form prescribed by the Director of Government Ethics and shall include:

(A) The registrant's name, permanent address, and temporary address while lobbying;

(B) The name and address of each person who will lobby on the registrant's behalf;

(C) The name, address, and nature of the business of any person who compensates the registrant and the terms of the compensation; and

(D) The identification, by formal designation, if known, of matters on which the registrant expects to lobby.

(2) The Director of Government Ethics shall publish in the District of Columbia Register on or before February 15th and on or before August 15th of each year a summary of all information required to be submitted under this subsection.

(c) No later than 10 days after a registrant files a registration form with the Director of Government Ethics, the Director of Government Ethics shall publish on the Ethics Board's website a summary of all information required to be submitted under this section.

(Apr. 27, 2012, D.C. Law 19-124, § 229, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.30. Activity reports.

(a) Each registrant shall file with the Director of Government Ethics between the 1st and 10th day of July and January of each year a report signed under oath concerning the registrant's lobbying activities during the previous 6-month period. If the registrant is not an individual, an authorized officer or agent of the registrant shall sign the form. A registrant shall file a separate activity report for each person from whom he or she receives compensation. The reports shall be public documents and shall be on a form prescribed by the Director of Government Ethics and shall include the following:

(1) A complete and current statement of the information required to be supplied pursuant to § 1-1162.29;

(2)(A) Total expenditures on lobbying broken down into the following categories:

- (i) Office expenses;
- (ii) Advertising and publications;
- (iii) Compensation to others;
- (iv) Personal sustenance, lodging, and travel, if compensated;
- (v) Other expenses;

(B) Each expenditure of \$50 or more shall also be itemized by the date, name, and address of the recipient, and the amount and purpose of the expenditure;

(3) Each political expenditure, loan, gift, honorarium, or contribution of \$50 or more made by the registrant or anyone acting on behalf of the registrant to benefit an official in the legislative or executive branch, a member of his or her staff or household, or a campaign or testimonial committee established for the benefit of the official, be itemized by date, beneficiary, amount, and circumstances of the transaction; including the aggregate of all expenditures that are less than \$50;

(4) Each official in the executive or legislative branch and any member of the official's staff, including personal and committee staff, who has a business relationship or a professional services relationship with the registrant shall be identified by name and the nature of the business relationship with the registrant;

(5) Each official in the executive or legislative branch with whom the registrant has had written or oral communications during the reporting periods related to lobbying activities conducted by the registrant shall also be included in the report, identifying the official with whom the communication was made; and

(6) Each person whom the registrant has given compensation to lobby on his or her behalf shall also be listed in the report.

(b) Each registrant shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to substantiate the activity reports required to be made pursuant to this section for 5 years from the date of filing

of the report containing these items. These materials shall be made available for inspection upon requests by the Director of Government Ethics after reasonable notice.

(c) Each registrant who does not file a report required by this section for a given period is presumed not to be receiving or expending funds that are required to be reported under this part.

(Apr. 27, 2012, D.C. Law 19-124, § 230, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.31. Prohibited activities.

(a) No registrant or anyone acting on behalf of a registrant shall offer, give, or cause to be given a gift or service to an official in the legislative or executive branch or a member of his or her staff that exceeds \$100 in value in the aggregate in any calendar year. This section shall not be construed to restrict in any manner contributions authorized in §§ 1-1163.33, 1-1163.34, and 1-1163.38.

(b) No official in the legislative or executive branch or a member of his or her staff shall solicit or accept anything of value in violation of subsection (a) of this section.

(c) No person shall knowingly or willfully make or cause to be made any false or misleading statement or misrepresentation of the facts relating to pending administrative decisions or legislative actions to any official in the legislative or executive branch;

(d) No person shall, knowing a document to contain a false statement relating to pending administrative decisions or legislative actions, cause a copy of the document to be transmitted to an official in the legislative or executive branch without notifying the official in writing of the truth.

(e) No information copied from registration forms and activity reports required by this part or from lists compiled from such forms and reports shall be sold or utilized by any person for the purpose of soliciting campaign contributions or selling tickets to a testimonial or similar fundraising affair or for any commercial purpose.

(f) No public official shall be employed as a lobbyist while acting as a public official, except as provided in § 1-1162.28.

(g)(1) No lobbyist or registrant or person acting on behalf of the lobbyist or registrant, shall provide legal representation, or other professional services, to an official in the legislative or executive branch, or to a member of his or her staff, at no cost or at a rate that is less than the lobbyist or registrant would routinely bill for the representation or service in the marketplace.

(2) Notwithstanding paragraph (1) of this section, a nonprofit organization that routinely provides legal representation or other services to clients at no cost may provide such representation or services to such client when doing so serves the purposes for which such services are routinely provided, and the representation and services are not provided by a lobbyist or registrant.

(Apr. 27, 2012, D.C. Law 19-124, § 231, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1162.32. Penalties; prohibition from serving as lobbyist; citizen suits.

(a) Notwithstanding § 1-1162.21 and except as provided in subsection (c) of this section, any person who willfully and knowingly violates any of the provisions of this part shall be fined not more than \$5,000, or imprisoned for not more than 12 months, or both.

(b) In addition to the penalties provided for in subsection (a) of this section, any person convicted of the misdemeanor specified in that section may be prohibited from serving as a lobbyist for a period of 3 years from the date of the conviction.

(c) Any person who files a report or registration form required under this part in an untimely manner shall be assessed a civil penalty of \$10 per day up to 30 days (excluding Saturdays, Sundays, and holidays) that the report or registration form is late. The Ethics Board may waive the penalty imposed under this subsection for good cause shown.

(d) Should any provision of this subchapter not be enforced by the Ethics Board, a citizen of the District of Columbia may bring suit in the nature of mandamus in the Superior Court of the District of Columbia, directing the Ethics Board to enforce the provisions of this part. Reasonable attorneys fees may be awarded to the citizen against the District should he or she prevail in this action, or if it is settled in substantial conformity with the relief sought in the petition prior to order by the court.

(Apr. 27, 2012, D.C. Law 19-124, § 232, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

Subchapter III. Campaign Finance.

§ 1-1163.01. Short title.

This subchapter may be cited as the “Campaign Finance Act of 2011”.

(Apr. 27, 2012, D.C. Law 19-124, § 301, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

Part A
OFFICE OF CAMPAIGN FINANCE.

§ 1-1163.02. Office of Director of Campaign Finance established; enforcement of subchapter.

(a) There is established within the Elections Board the Office of Campaign Finance, which shall be headed by the Director of Campaign Finance. The Elections Board shall appoint the Director of Campaign Finance, who shall serve at the pleasure of the Elections Board. The Director of Campaign Finance shall be entitled to receive compensation at the maximum rate for Grade 16 of the District Schedule, pursuant to subchapter XI of Chapter 6 of this title [§ 1-611.01 et seq.]. The Director of Campaign Finance shall be responsible for the administrative operations of the Elections Board pertaining to this subchapter and shall perform other duties as may be delegated or assigned by regulation or by order of the Elections Board; provided, that the Elections Board shall not delegate to the Director of Campaign Finance the making of regulations regarding elections.

(b)(1) The Elections Board may issue, amend, and rescind rules and regulations related to the operation of the Director of Campaign Finance, absent recommendation of the Director of Campaign Finance.

(2) The Elections Board shall prepare an annual report of the Director of Campaign Finance's performance pursuant to his or her functions as prescribed § 1-1163.04, in addition to those duties the Elections Board may by law assign.

(c) Where the Elections Board, following the presentation by the Director of Campaign Finance of evidence constituting an apparent violation of this subchapter, makes a finding of an apparent violation of this subchapter, it shall refer the case to the United States Attorney for the District of Columbia for prosecution, and shall make public the fact of such referral and the basis for the finding. In addition, the Elections Board, through its General Counsel, shall initiate, maintain, defend, or appeal any civil action (in the name of the Elections Board) relating to the enforcement of the provisions of this subchapter. The Elections Board may, through its General Counsel, petition the courts of the District of Columbia for declaratory or injunctive relief concerning any action covered by the provisions of this subchapter. The Director of Campaign Finance shall have no authority concerning the enforcement of provisions of subchapter I of Chapter 10 of this title [§ 1-1001.01 et seq.], and recommendations of criminal or civil, or both, violations under [subchapter I of Chapter 10 of this Title [§1-1001.01 et seq.]. shall be presented by the General Counsel to the Elections Board in accordance with the rules and regulations of general application adopted by the Elections Board in accordance with the provisions of Chapter 5 of Title 2. Upon the direction of the Elections Board, the Director of Campaign Finance may be called upon to investigate allegations of viola-

tions of the elections laws in accord with the provisions of this subsection.
(Apr. 27, 2012, D.C. Law 19-124, § 302, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.03. Powers of Director of Campaign Finance.

(a)(1) The Director of Campaign Finance, under regulations of general applicability approved by the Elections Board, shall have the power:

(A) To require any person to submit in writing reports and answers to questions as the Director of Campaign Finance may prescribe relating to the administration and enforcement of this subchapter; and the submission shall be made within such reasonable period and under oath or otherwise as the Director of Campaign Finance may determine;

(B) To require any person to submit through an electronic format or medium the reports required in this subchapter. The Elections Board shall issue regulations governing the submission of reports, pursuant to this subparagraph, through a standardized electronic format or medium;

(C) To administer oaths;

(D) To require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(E) In any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Director of Campaign Finance and has the power to administer oaths and, in these instances, to compel testimony and the production of evidence in the same manner as authorized under subparagraph (D) of this paragraph;

(F) To pay witnesses the same fees and mileage as are paid in like circumstances in the Superior Court of the District of Columbia;

(G) To accept gifts; and

(H) To institute or conduct, on his or her own motion, an informal hearing on alleged violations of the reporting requirements contained in this subchapter. Where the Director of Campaign Finance, in his or her discretion, determines that a violation has occurred, the Director of Campaign Finance may issue an order to the offending party or parties to cease and desist the violations within the 5-day period immediately following the issuance of the order. Should the offending party or parties fail to comply with the order, the Director of Campaign Finance shall present evidence of the failure to the Elections Board. Following the presentation of evidence to the Elections Board by the Director of Campaign Finance, in an adversary proceeding and an open hearing, the Elections Board may refer the matter to the United States Attorney for the District of Columbia in accordance with the provisions in § 1-1163.02(c) or may dismiss the action.

(2) Subpoenas issued under this section shall be issued by the Director of Campaign Finance upon the approval of the Elections Board.

(b) The Superior Court of the District of Columbia may, upon petition by the Elections Board, in case of refusal to obey a subpoena or order of the Elections

Board issued under subsection (a) of this section, issue an order requiring compliance; and any failure to obey the order of the court may be punished by the court as contempt.

(c) All investigations of alleged violations of this subchapter shall be made by the Director of Campaign Finance in his or her discretion, in accordance with procedures of general applicability issued by the Director of Campaign Finance in accordance with Chapter 5 of Title 2. All allegations of violations of this subchapter, which shall be presented to the Elections Board, in writing, shall be transmitted to the Director of Campaign Finance without action by the Elections Board. In a reasonable time, the Director of Campaign Finance shall cause evidence concerning the alleged violation to be presented to the Elections Board, if he or she believes that sufficient evidence exists constituting an apparent violation. Following the presentation of evidence to the Elections Board by the Director of Campaign Finance, in an adversary proceeding and an open hearing, the Elections Board may refer the matter to the United States Attorney for the District of Columbia in accordance with the provisions of § 1-1163.02(c), or may dismiss the action. In no case may the Elections Board refer information concerning an alleged violation of this subchapter to the United States Attorney for the District of Columbia without the presentation of evidence herein provided by the Director of Campaign Finance. Should the Director of Campaign Finance fail to present a matter or advise the Elections Board that insufficient evidence exists to present a matter, or that an additional period of time is needed to investigate the matter further, within 90 days of its receipt by the Elections Board or the Director of Campaign Finance, the Elections Board may order the Director of Campaign Finance to present the matter as herein provided. The provisions of this subsection shall in no manner limit the authority of the United States Attorney for the District of Columbia.

(Apr. 27, 2012, D.C. Law 19-124, § 303, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.04. Duties of Director of Campaign Finance.

The Director of Campaign Finance shall:

- (1) Develop and furnish prescribed forms, materials, and electronic formats or mediums, including electronic or digital signatures, for the making of the reports and statements required to be filed with him or her pursuant to this subchapter;
- (2) Develop a filing, coding, and cross-indexing system consonant with the purposes of this subchapter;
- (3) Make the reports and statements filed with him or her available for public inspection and copying, commencing as soon as practicable, but not later than the end of the 2nd day following the day during which it was received, and to permit and facilitate copying of any report or statement by hand and by duplicating machine, as requested by any person, at reasonable cost to the

person, except any information copied from the reports and statements shall not be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose;

(4) Preserve reports and statements for a period of 10 years from date of receipt;

(5) Compile and maintain a current list of all statements or parts of statements on file pertaining to each candidate;

(6) Prepare and publish other reports as he or she may consider appropriate;

(7) Assure dissemination of statistics, summaries, and reports prepared under this subchapter, including a biennial report summarizing the receipts and expenditures of candidates for public office in the prior 2-year period, and the receipts and expenditures of political, exploratory, inaugural, transition, and legal defense committees during the prior 2-year period. The Director of Campaign Finance shall make available to the Mayor, Council, and the general public the first report by January 31, 2013, and shall present the summary report on the same date every 2 years thereafter. The report shall describe the receipts and expenditures of candidates for Mayor, the Chairman and members of the Council, the President and members of the State Board of Education, shadow Senator, and shadow Representative, but shall exclude candidates for Advisory Neighborhood Commissioner. The report shall provide, at a minimum, the following data, as well as other information that the Director of Campaign Finance considers appropriate:

(A) A summary of each candidate's receipts, in dollar amount and percentage terms, by donor categories that the Director of Campaign Finance considers appropriate, such as the candidate himself or herself, individuals, political party committees, other political committees, corporations, partnerships, and labor organizations;

(B) A summary of each candidate's receipts, in dollar amount and percentage terms, by the size of the donation, including donations of \$500 or more; donations of \$250 or more but less than \$500; donations of \$100 or more but less than \$250; and donations of less than \$100;

(C) The total amount of a candidate's receipts and expenditures for primary and general elections, respectively, when applicable;

(D) A summary of each candidate's expenditures, in dollar amount and percentage terms, by operating expenditures, transfers to other authorized committees, loan repayments, and refunds of contributions; and

(E) A summary of the receipts and expenditures of political, exploratory, inaugural, transition, and legal defense committees, using categories considered appropriate by the Director of Campaign Finance;

(8) Make audits and field investigations with respect to reports and statements filed under this subchapter, and with respect to alleged failures to file any report or statement required under the provisions of this subchapter; and

(9) Perform such other duties as the Elections Board may require.

(Apr. 27, 2012, D.C. Law 19-124, § 304, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.05. District of Columbia Board of Elections created.

On or after April 27, 2012, the District of Columbia Board of Elections and Ethics established under subchapter I of Chapter 10 of this title 1 [§ 1-1001.01 et seq.]. shall be known as the District of Columbia Board of Elections and shall have the powers, duties, and functions as provided in that subchapter, in any other law in effect on the date immediately preceding April 27, 2012, and in this subchapter. Any reference in any law or regulation to the District of Columbia Board of Elections and Ethics shall, on and after April 27, 2012, be deemed to refer to the District of Columbia Board of Elections.

(Apr. 27, 2012, D.C. Law 19-124, § 305, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.06. Advisory opinions.

(a) Upon application made by any individual holding public office, any candidate, any person who may be a potential registrant under this subchapter, or any political, exploratory, inaugural, transition, or legal defense committee, the Elections Board shall provide within a reasonable period of time an advisory opinion with respect to any specific transaction or activity inquired of, as to whether such transaction or activity would constitute a violation of any provision of this subchapter or of any provision of subchapter I of Chapter 10 of this title [§ 1-1001.01 et seq.]. over which the Elections Board has primary jurisdiction. The Elections Board shall publish a concise statement of each request for an advisory opinion, without identifying the person seeking the opinion, in the District of Columbia Register within 20 days of its receipt by the Elections Board. Comments upon the requested opinions shall be received by the Elections Board for a period of at least 15 days following publication in the District of Columbia Register. The Elections Board may waive the advance notice and public comment provisions, following a finding that the issuance of the advisory opinion constitutes an emergency necessary for the immediate preservation of the public peace, health, safety, welfare, or morals.

(b) Advisory opinions shall be published in the District of Columbia Register within 30 days of their issuance; provided, that the identity of any person requesting an advisory opinion shall not be disclosed in the District of Columbia Register without his or her prior consent in writing. When issued according to rules of the Elections Board, an advisory opinion shall be deemed to be an order of the Elections Board.

(Apr. 27, 2012, D.C. Law 19-124, § 306, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

Part B

CAMPAIGN FINANCE COMMITTEES.

§ 1-1163.07. Organization of committees.

Political, exploratory, transition, and inaugural committees, which are established pursuant to this part, shall be subject to the following requirements:

(1) Each committee shall file with the Director of Campaign Finance a statement of organization within 10 days after its organization. The statement of organization shall include:

(A) The name and address of the committee;

(B) The name, address, and position of the custodian of books and accounts;

(C) The name, address, and position of other principal officers, including officers and members of the finance committee, if any;

(D) The name and address of the bank or banks designated by the committee as the committee's depository or depositories, together with the subchapter and number of each account and safety deposit box used by that committee at the depository or depositories, and the identification of each individual authorized to make withdrawals or payments out of each account or box; and

(E) Other information as shall be required by the Director of Campaign Finance.

(2) Any change in information previously submitted in a statement of organization shall be reported to the Director of Campaign Finance within the 10-day period following the change.

(3) Any committee which, after having filed one or more statements of organization, disbands or determines it will no longer receive contributions or make expenditures during the calendar year shall so notify the Director of Campaign Finance.

(4) Every committee shall have a chairman and a treasurer. No contribution and no expenditure shall be accepted or made by or on behalf of a committee at a time when there is a vacancy in the office of treasurer for the committee and no other person has been designated and has agreed to perform the functions of treasurer. No expenditure shall be made for or on behalf of a committee without the authorization of its chairman or treasurer, or their designated agents.

(5)(A) For every contribution and expenditure of \$50 or more for or on behalf of a committee, a detailed account shall be submitted to the treasurer of a committee on demand, or within 5 days after receipt of the contribution or expenditure, of the amount, the name and address (including the occupation

and the principal place of business, if any) of the contributor or the individual to whom the expenditure was made, and the date of the contribution or expenditure. For an expenditure, the account should also include the office sought by the candidate on whose behalf the expenditure was made.

(B) The treasurer or candidate shall obtain and preserve receipted bills and records as may be required by the Elections Board.

(6) All funds of a committee shall be segregated from, and may not be commingled with, any personal funds of officers, members, or associates of the committee.

(Apr. 27, 2012, D.C. Law 19-124, § 307, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.08. Designation of campaign depositories; petty cash fund.

(a) Each committee and each candidate accepting contributions or making expenditures, shall designate in the registration statement required under § 1-1163.07 or § 1-1163.12, one or more national banks located in the District of Columbia as the depository or depositories of that committee or candidate. Each committee or candidate shall maintain a checking account or accounts at such depository or depositories and shall deposit any contributions received by the committee or candidate into that account or accounts. No expenditures may be made by a committee or candidate except by check drawn payable to the person to whom the expenditure is being made on that account or accounts, other than petty cash expenditures as provided in subsection (b) of this section.

(b) A committee or candidate may maintain a petty cash fund out of which may be made expenditures not in excess of \$50 to any person in connection with a single purchase or transaction. A record of petty cash receipts and disbursements shall be kept in accordance with requirements established by the Elections Board, and statements and reports of expenditures shall be furnished to the Director of Campaign Finance as it may require.

(Apr. 27, 2012, D.C. Law 19-124, § 308, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.09. Reporting.

(a) The following individuals shall file with the Director of Campaign Finance, and with the principal campaign committee, if applicable, reports of receipts and expenditures on forms to be prescribed or approved by the Director of Campaign Finance:

- (1) The treasurer of each political committee supporting a candidate;
- (2) The treasurer of each political committee engaged in obtaining signatures on any initiative, referendum, or recall petition, or engaged in promoting

or opposing the ratification of any initiative, referendum, or recall measure placed before the electors of the District of Columbia, and each candidate required to register under this subchapter; and

(3) The treasurer of each exploratory, inaugural, and transition committee.

(b) The reports shall be filed on the 10th day of March, June, August, October, and December in the 7 months preceding the date on which, and in each year during which, an election is held for the office sought, and on the 8th day next preceding the date on which the election is held, and also by the 31st day of January of each year. In addition, the reports shall be filed on the 31st day of July of each year in which there is no election. The reports shall be complete as of the date prescribed by the Director of Campaign Finance, which shall not be more than 5 days before the date of filing, except that any contribution of \$200 or more received after the closing date prescribed by the Director of Campaign Finance for the last report required to be filed before the election shall be reported within 24 hours after its receipt.

(c) Each report under this section shall disclose:

(1) The amount of cash on hand at the beginning of the reporting period;

(2) The full name and mailing address, including the occupation and the principal place of business, if any, of each person who has made one or more contributions to or for a committee or candidate, including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events, within the calendar year in an aggregate amount or value in excess of \$50 or more, together with the amount and date of the contributions;

(3) The total sum of individual contributions made to or for a committee or candidate during the reporting period and not reported under paragraph (2) of this subsection;

(4) Each loan to or from any person within the calendar year in an aggregate amount or values of \$50 or more, together with the full names and mailing addresses (including the occupation and the principal place of business, if any) of the lender and endorsers, if any, and the date and amount of the loans; and

(5) The net amount of proceeds from:

(A) The sale of tickets to each dinner, luncheon, rally, and other fundraising events organized by a committee;

(B) Mass collections made at the events; and

(C) Sales by a committee of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials;

(6) Each contribution, rebate, refund, or other receipt of \$50 or more not otherwise listed under paragraphs (2) through (5) of this subsection;

(7) The total sum of all receipts by or for a committee or candidate during the reporting period;

(8) The full name and mailing address (including the occupation and the principal place of business, if any) of each person to whom expenditures have been made by a committee or on behalf of a committee or candidate within the calendar year in an aggregate amount or value of \$10 or more, the amount,

date, and purpose of each expenditure, and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made;

(9) The total sum of expenditures made by a committee or candidate during the calendar year;

(10) The amount and nature of debts and obligations owed by or to the committee, in a form as the Director of Campaign Finance may prescribe, and a continuous reporting of its debts and obligations after the election when the Director of Campaign Finance may require until the debts and obligations are extinguished; and

(11) Other information as may be required by the Director of Campaign Finance.

(d) The reports to be filed under subsection (a) of this section shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during the year, only the unchanged amount need be carried forward. If no contributions or expenditures have been accepted or expended during a calendar year, the treasurer of the committee or candidate shall file a statement to that effect.

(e)(1) A report or statement required by this part to be filed by a treasurer of a committee, a candidate, or by any other person, shall be verified by the oath or affirmation of the person filing the report or statement.

(2) A copy of a report or statement shall be preserved by the person filing it for a period to be designated by the Elections Board in a published regulation.

(3) The Elections Board shall, by published regulations of general applicability, prescribe the manner in which contributions and expenditures in the nature of debts and other contracts, agreements, and promises to make contributions or expenditures shall be reported. The regulations shall provide that they be reported in separate schedules. In determining aggregate amounts of contributions and expenditures, amounts reported as provided in the regulations shall not be considered until actual payment is made.

(Apr. 27, 2012, D.C. Law 19-124, § 309, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.10. Principal campaign committee.

(a) Each candidate for office shall designate in writing one political committee as his or her principal campaign committee. The principal campaign committee shall receive all reports made by any other political committee accepting contributions or making expenditures for the purpose of influencing the nomination for election, or election, of the candidate who designated it as his or her principal campaign committee. The principal campaign committee may require additional reports to be made to it by any political committee and may designate the time and number of all reports. No political committee may be designated as the principal campaign committee of more than one candidate, except a principal campaign committee supporting the nomination or

election of a candidate as an official of a political party may support the nomination or election of more than one candidate, but may not support the nomination or election of a candidate for any public office.

(b) Each statement (including the statement of organization required under § 1-1163.07) or report that a political committee is required to file with or furnish to the Director of Campaign Finance under the provisions of this part shall also be furnished, if that political committee is not a principal campaign committee, to the principal campaign committee for the candidate on whose behalf that political committee is accepting or making, or intends to accept or make, contributions or expenditures.

(c) The treasurer of each political committee which is a principal campaign committee, and each candidate, shall receive all reports and statements filed with or furnished to it or him or her by other political committees, consolidate, and furnish the reports and statements to the Director of Campaign Finance, together with the reports and statements of the principal campaign committee of which he or she is treasurer or which was designated by him or her, in accordance with the provisions of this part and regulations prescribed by the Elections Board.

(Apr. 27, 2012, D.C. Law 19-124, § 310, 59 DCR 1862.)

Emergency legislation. — For temporary (90 day) addition of section, see § 2(a) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Clarification Emergency Amendment Act of 2012 (D.C. Act 19-371, May 16, 2012, 59 DCR 5711).

For temporary (90 day) addition of section, see § 1072(c) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section, see § 1072(c) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.11. Specific requirements for statements of organization filed by political committees.

In addition to the statement of organization set forth in § 1-1163.07, each political committee shall also file the following information with the Director of Campaign Finance within 10 days after the political committee's organization:

(1) The names, addresses, and relationships of affiliated or connected organizations;

(2) The area, scope, or jurisdiction of the political committee;

(3) The name, address, office sought, and party affiliation of:

(A) Each candidate whom the committee is supporting; and

(B) Any other individual, if any, whom the committee is supporting for nomination for election or election, to any public office whatever; or, if the committee is supporting the entire ticket of any party, the name of the party; or, if the committee is supporting or opposing any initiative or referendum, the summary statement and short title of the initiative or referendum, prepared in accordance with § 1-1001.16; or, if the committee is supporting or opposing

any recall measure, the name and office of the public official whose recall is sought or opposed in accordance with § 1-1001.17;

(4) A statement whether the political committee is a continuing one; and

(5) The disposition of residual funds which will be made in the event of dissolution.

(Apr. 27, 2012, D.C. Law 19-124, § 311, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.12. Registration statement of candidate; depository information.

(a) Each individual shall, within 5 days of becoming a candidate, or within 5 days of the day on which he or she, or any person authorized by him or her to do so, has received a contribution or made an expenditure in connection with his or her campaign or for the purposes of preparing to undertake his or her campaign, file with the Director of Campaign Finance a registration statement in a form prescribed by the Director of Campaign Finance.

(b) In addition, candidates shall provide the Director of Campaign Finance the name and address of the campaign depository or depositories designated by that candidate, together with the title and number of each account and safety deposit box used by that candidate at the depository or depositories, and the identification of each individual authorized to make withdrawals or payments out of the account or box, and other information as shall be required by the Director of Campaign Finance.

(Apr. 27, 2012, D.C. Law 19-124, § 312, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.13. Reports by others than committees and candidates.

Every person (other than a committee or candidate) who makes contributions or expenditures, other than by contribution to a committee or candidate, in an aggregate amount of \$50 or more within a calendar year shall file with the Director of Campaign Finance a statement containing the information required by § 1-1163.09. Statements required by this section shall be filed on the dates on which reports by committees are filed, but need not be cumulative.

(Apr. 27, 2012, D.C. Law 19-124, § 313, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.14. Exemption for total expenses under \$500.

Except for the provisions of § 1-1163.12(a), the provisions of this part shall not apply to any candidate who anticipates spending or spends less than \$500 in any one election and who has not designated a principal campaign committee. On the 15th day before the date of the election in which the candidate is entered, and on the 30th day after the date of the election, the candidate shall certify to the Director of Campaign Finance that he or she has not spent more than \$500 in the election.

(Apr. 27, 2012, D.C. Law 19-124, § 314, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.15. Identification of campaign literature.

(a) All newspaper or magazine advertising, posters, circulars, billboards, handbills, bumper stickers, sample ballots, initiative, referendum, or recall petitions, and other printed matter with reference to or intended for the support or defeat of a candidate or group of candidates for nomination or election to any public office, or for the support or defeat of any initiative, referendum, or recall measure, shall be identified by the words “paid for by” followed by the name and address of the payer or the committee or other person and its treasurer on whose behalf the material appears.

(b) Each committee and candidate shall include on the face or front page of all literature and advertisement soliciting funds the following notice: “A copy of our report is filed with the Director of Campaign Finance of the District of Columbia Board of Elections.”

(Apr. 27, 2012, D.C. Law 19-124, § 315, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.16. Candidate’s liability for financial obligation incurred by a committee.

No provision of this part shall be construed as creating liability on the part of any candidate for any financial obligation incurred by a committee. For the purposes of this part, and subchapter I of Chapter 10 of this title [§ 1-1001.01 et seq.], actions of an agent acting for a candidate shall be imputed to the candidate; provided, that the actions of the agent may not be imputed to the candidate in the presence of a provision of law requiring a willful and knowing violation of this part or subchapter I of Chapter 10 of this title [§ 1-1001.01 et seq.], unless the agency relationship to engage in the act is shown by clear and convincing evidence.

(Apr. 27, 2012, D.C. Law 19-124, § 316, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.17. Specific requirements for reports of receipts and expenditures by political committees.

(a) Each report submitted to the Director of Campaign Finance pursuant to the requirements set forth in § 1-1163.09 shall also disclose the name and address of each political committee or candidate from which the reporting committee or the candidate received, or to which that committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers.

(b) In the case of reports filed by a political committee on behalf of initiative, referendum, or recall measures under this section, the reports shall be filed on the dates as the Elections Board may by rule prescribe, but in no event shall more than 4 separate reports be required during the consideration of a particular initiative, referendum, or recall measure by any political committee or committees collecting signatures, or supporting or opposing the measures.

(Apr. 27, 2012, D.C. Law 19-124, § 317, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.18. Fund balance requirements of exploratory committees.

(a) Any balance in the exploratory committee fund shall be transferred only to an established principal campaign committee, political committee, or charitable organization in accordance with § 47-1803.03(a)(8).

(b) Exploratory committee fund balances shall not be deemed the personal funds of any individual, including the individual seeking elective office.

(Apr. 27, 2012, D.C. Law 19-124, § 318, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.19. Aggregate and individual contribution limits of exploratory committees.

(a) Exploratory committees shall not receive aggregate contributions in excess of:

- (1) \$200,000 for a Mayoral exploratory committee;
- (2) \$150,000 for a Chairman of the Council exploratory committee;
- (3) \$100,000 for an at-large member of the Council exploratory committee;
- (4) \$50,000 for a Ward Councilmember or President of the State Board of Education exploratory committee; and

(5) \$20,000 for a member of the State Board of Education exploratory committee.

(b) Exploratory committees shall not receive individual contributions in excess of:

- (1) \$2,000 for a Mayoral exploratory committee;
- (2) \$1,500 for a Chairman of the Council exploratory committee;
- (3) \$1,000 for an at-large member of the Council exploratory committee;
- (4) \$500 for a Ward Councilmember or President of the State Board of Education exploratory committee; and
- (5) \$200 for a member of the State Board of Education exploratory committee.

(Apr. 27, 2012, D.C. Law 19-124, § 319, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.20. Contributions to exploratory committees.

When an individual decides to run for office and becomes a candidate, contributions received during the exploratory period shall apply to the campaign contribution limits for the candidate as provided under § 1-1163.33.

(Apr. 27, 2012, D.C. Law 19-124, § 320, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.21. Duration of an exploratory committee.

The duration of an exploratory committee shall not exceed 18 months for any one office. Once a candidate's exploratory committee reaches the maximum duration of 18 months, the candidate shall file a declaration of candidacy and form a principal political campaign committee or terminate the exploratory committee.

(Apr. 27, 2012, D.C. Law 19-124, § 321, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.22. Contributions to inaugural committees.

No person shall make any contribution to or for an inaugural committee which, and the Mayor shall not receive any contribution to or for an inaugural committee from any person which, when aggregated with all other contributions to or for the inaugural committee received from such person, exceeds \$10,000 in an aggregate amount; provided, that the \$10,000 limitation shall not apply to contributions made by the Mayor for the purpose of funding his or her own inaugural committee within the District of Columbia.

(Apr. 27, 2012, D.C. Law 19-124, § 322, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.23. Fund balance requirements for inaugural committees.

Any balance in the inaugural committee fund shall be transferred only to a nonprofit organization, within the meaning of section 501(c) of the Internal Revenue Code, operating in good standing in the District of Columbia for a minimum of one calendar year before the date of any transfer, or to a constituent-service program pursuant to § 1-1163.38.

(Apr. 27, 2012, D.C. Law 19-124, § 323, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.24. Duration of an inaugural committee.

An inaugural committee shall terminate no later than 45 days from the beginning of the term of the new Mayor or Chairman, except that the inaugural committee may continue to accept contributions necessary to retire the debts of the committee.

(Apr. 27, 2012, D.C. Law 19-124, § 324, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.25. Fund balance requirements for transition committees.

Any balance in the transition committee fund shall be transferred only to a nonprofit organization within the meaning of section 501(c) of the Internal Revenue Code, operating in good standing in the District of Columbia for a minimum of one calendar year before the date of any transfer, or to a constituent-service program pursuant to § 1-1163.38.

(Apr. 27, 2012, D.C. Law 19-124, § 325, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.26. Contributions to transition committees.

(a) No person shall make any contribution to or for a transition committee which, and the Mayor shall not receive any contribution to or for a transition

committee from any person which, when aggregated with all other contributions to or for the transition committee received from the person, exceed \$2,000 in an aggregate amount; provided, that the \$2,000 limitation shall not apply to contributions made by the Mayor for the purpose of funding his or her own transition committee within the District of Columbia.

(b) No person shall make any contribution to a transition committee which, and the Chairman of the Council shall not receive any contribution to a transition committee from any person which, when aggregated with all other contributions to the transition committee received from the person, exceeds \$1,000 in an aggregate amount; provided, that the \$1,000 limitation shall not apply to contributions made by the Chairman of the Council for the purpose of funding his or her own transition committee within the District of Columbia.

(Apr. 27, 2012, D.C. Law 19-124, § 326, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.27. Duration of a transition committee; restriction on formation.

(a) A transition committee shall terminate no later than 45 days from the beginning of the term of the new Mayor or Chairman, except that the transition committee may continue to accept contributions necessary to retire the debts of the committee.

(b) Notwithstanding this part, no transition committee may be organized if an appropriation pursuant to § 1-204.46 has been approved.

(Apr. 27, 2012, D.C. Law 19-124, § 327, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

Part C

LEGAL DEFENSE FUNDS.

§ 1-1163.28. Legal defense committees — organization.

(a)(1) One legal defense committee and one legal defense checking account shall be established and maintained for the purpose of soliciting, accepting, and spending legal defense funds, which funds may be spent to defray attorney's fees and other related costs for a public official's legal defense to one or more civil, criminal, or administrative proceedings. No committee, fund, entity, or trust may be established to defray professional fees and costs except pursuant to this section.

(2) Attorney's fees and other related legal costs shall not include, for example, expenses for fundraising, media or political consulting fees, mass

mailing or other advertising, or a payment or reimbursement for a fine, penalty, judgment or settlement, or a payment to return or disgorge contributions made to any other committee controlled by the candidate or officer.

(b) Each legal defense committee shall file with the Director of Campaign Finance a statement of organization within 10 days after its organization, which shall include:

- (1) The name and address of the legal defense committee;
- (2) The name, address, and position of the custodian of books and accounts;
- (3) The name, address, and position of other principal officers;
- (4) The beneficiary of the legal defense committee and checking account;
- (5) The name and address of the bank designated by the committee as the legal defense committee depository, together with the title and number of the checking account and safety deposit box used by that committee at the depository, and the identification of each individual authorized to make withdrawals or payments out of each such account or box; and

(6) Other information as shall be required by the Director of Campaign Finance.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Director of Campaign Finance within the 10-day period following the change.

(d) Any legal defense committee which, after having filed one or more statements of organization, disbands or determines it will no longer receive contributions or make expenditures during the calendar year shall so notify the Director of Campaign Finance.

(e) Any balance in the legal defense committee fund shall be transferred only to a nonprofit organization, within the meaning of section 501(c) of the Internal Revenue Code, operating in good standing in the District of Columbia for a minimum of one calendar year before the date of any transfer, or to a constituent-service program pursuant to § 1-1163.38.

(Apr. 27, 2012, D.C. Law 19-124, § 328, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.29. Legal defense committees — contributions and expenditures.

(a) Each legal defense committee shall have a chairman and a treasurer. No contribution and no expenditure shall be accepted or made by or on behalf of a legal defense committee at a time when there is a vacancy in the office of treasurer for the committee and no other person has been designated and has agreed to perform the functions of treasurer. No expenditure shall be made for or on behalf of a legal defense committee without the authorization of its chairman or treasurer, or their designated agents.

(b) Every person who receives a contribution of \$50 or more for or on behalf of a legal defense committee shall, on demand of the treasurer, and in any

event within 5 days after receipt of the contribution, submit to the treasurer of the committee a detailed account thereof, including the amount, the name and address (including the occupation and the principal place of business, if any) of the person making the contribution, and the date on which the contribution was received. All funds of a legal defense committee shall be segregated from, and may not be commingled with, any personal funds of officers, members, or associates of such committee.

(c) The treasurer of a legal defense committee, and each beneficiary, shall keep a detailed and exact account of:

- (1) All contributions made to or for the legal defense committee;
 - (2) The full name and mailing address (including the occupation and the principal place of business, if any) of every person making a contribution of \$50 or more, and the date and amount of the contribution;
 - (3) All expenditures made by or on behalf of the legal defense committee;
- and

(4) The full name and mailing address (including the occupation and the principal place of business, if any) of every person to whom any expenditure is made, the date and amount thereof, and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made.

(d) The treasurer or beneficiary shall obtain and preserve such receipted bills and records as may be required by the Elections Board.

(e)(1) No person shall make any contribution to or for a legal defense committee which, when aggregated with all other contributions to or for the legal defense committee received from the person, exceeds \$10,000 in an aggregate amount; provided, that the \$10,000 limitation shall not apply to contributions made by a public official for the purpose of funding his or her own legal defense committee within the District of Columbia.

(2) No contributions to a legal defense committee shall be made by a lobbyist or registrant or by a person acting on behalf of the lobbyist or registrant.

(3) A legal defense committee shall not accept a contribution from a lobbyist or registrant or by a person acting on behalf of the lobbyist or registrant.

(Apr. 27, 2012, D.C. Law 19-124, § 329, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.30. Designation of legal defense depositories.

Each legal defense committee accepting contributions or making expenditures shall designate in the registration statement required under § 1-1163.28, one or more banks located in the District of Columbia as the legal defense depository or depositories of that legal defense committee. Each committee shall maintain a checking account or accounts at the depository or depositories and shall deposit any contributions received by the committee into that account or accounts. No expenditures may be made by a committee except

by check drawn payable to the person to whom the expenditure is being made on that account.

(Apr. 27, 2012, D.C. Law 19-124, § 330, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.31. Reports of receipts and expenditures by legal defense committees.

(a) The treasurer of each legal defense committee shall file with the Director of Campaign Finance, and with the applicable principal campaign committee, reports of receipts and expenditures on forms to be prescribed or approved by the Director of Campaign Finance. The reports shall be filed within 30 days after the committee's organization and every 30 days thereafter in each year. The reports shall be complete as of a date as prescribed by the Director of Campaign Finance, which shall not be more than 5 days before the date of filing, except that any contribution of \$200 or more received after the closing date prescribed by the Director of Campaign Finance for the last report required to be filed before the election shall be reported within 24 hours after its receipt.

(b) Each report under this section shall disclose:

(1) The amount of cash on hand at the beginning of the reporting period;

(2) The full name and mailing address (including the occupation and the principal place of business, if any) of each person who has made one or more contributions to or for a committee within the calendar year in an aggregate amount or value in excess of \$50 or more, together with the amount and date of the contributions;

(3) The total sum of individual contributions made to or for a committee or candidate during the reporting period and not reported under paragraph (2) of this subsection;

(4) Each loan to or from any person within the calendar year in an aggregate amount or values of \$50 or more, together with the full names and mailing addresses (including the occupation and the principal place of business, if any) of the lender and endorsers, if any, and the date and amount of the loans;

(5) The total sum of all receipts by or for a committee during the reporting period;

(6) The full name and mailing address (including the occupation and the principal place of business, if any) of each person to whom expenditures have been made by a committee or on behalf of a committee within the calendar year in an aggregate amount or value of \$10 or more;

(7) The total sum of expenditures made by a committee during the calendar year;

(8) The amount and nature of debts and obligations owed by or to the committee, in a form as prescribed by the Director of Campaign Finance; and

(9) Other information as may be required by the Director of Campaign Finance.

(c) The reports to be filed under subsection (a) of this section shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the unchanged amount need be carried forward. If no contributions or expenditures have been accepted or expended during a calendar year, the treasurer of the legal defense committee shall file a statement to that effect.

(Apr. 27, 2012, D.C. Law 19-124, § 331, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.32. Formal requirements for reports and statements.

(a) A report or statement required by this part to be filed by a treasurer of a legal defense committee shall be verified by the oath or affirmation of the person filing the report or statement and by the individual to be benefitted by the committee.

(b) A copy of a report or statement shall be preserved by the person filing and by the individual to be benefitted by the committee for a period to be designated by the Elections Board in a published regulation.

(c) The Elections Board shall, by published regulations of general applicability, prescribe the manner in which contributions and expenditures in the nature of debts and other contracts, agreements, and promises to make contributions or expenditures shall be reported. The regulations shall provide that they be reported in separate schedules. In determining aggregate amounts of contributions and expenditures, amounts reported as provided in the regulations shall not be considered until actual payment is made.

(d) Any legal defense committee which, after having filed one or more statements of organization, disbands or determines it will no longer receive contributions or make expenditures during the calendar year shall so notify the Director.

(e) All actions of the Elections Board or of the United States Attorney for the District of Columbia to enforce the provisions of this part must be initiated within 5 years of the discovery of the alleged violation of this part.

(Apr. 27, 2012, D.C. Law 19-124, § 332, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

Part D
CONTRIBUTION LIMITATIONS.

§ 1-1163.33. Contribution limitations.

(a) No person shall make any contribution which, and no person shall receive any contribution from any person which, when aggregated with all other contributions received from that person relating to a campaign for nomination as a candidate or election to public office, including both the primary and general election or special elections, exceeds:

(1) In the case of a contribution in support of a candidate for Mayor or for the recall of the Mayor, \$2,000;

(2) In the case of a contribution in support of a candidate for Chairman of the Council or for the recall of the Chairman of the Council, \$1,500;

(3) In the case of a contribution in support of a candidate for member of the Council elected at-large or for the recall of a member of the Council elected at-large, \$1,000;

(4) In the case of a contribution in support of a candidate for member of the State Board of Education elected at-large or for member of the Council elected from a ward or for the recall of a member of the State Board of Education elected at-large or for the recall of a member of the Council elected from a ward, \$500;

(5) In the case of a contribution in support of a candidate for member of the State Board of Education elected from an election ward or for the recall of a member of the State Board of Education elected from an election ward or for an official of a political party, \$200; and

(6) In the case of a contribution in support of a candidate for a member of an Advisory Neighborhood Commission, \$25.

(b)(1) No person shall make any contribution in any one election for Mayor, Chairman of the Council, each member of the Council, and each member of the State Board of Education (including primary and general elections, but excluding special elections), which when combined with all other contributions made by that person in that election to candidates and political committees exceeds \$8,500.

(2) All contributions to a candidate's principal political committee shall be treated as contributions to the candidate and shall be subject to the contribution limitations contained in this section.

(c) In no case shall any person receive or make any contribution in legal tender in an amount of \$25 or more.

(d)(1) No person shall make contributions to any one political committee in any one election, including primary and general elections, but excluding special elections, which, in the aggregate, exceeds \$5,000.

(2) For the purposes of this subsection, the term "political committee" does not include an individual.

(e) No person shall make a contribution or cause a contribution to be made in the name of another person, and no person shall knowingly accept a contribution made by one person in the name of another person.

(f) Any expenditure made by any person advocating the election or defeat of any candidate for office which is not made at the request or suggestion of the candidate, any agent of the candidate, or any political committee authorized by the candidate to make expenditures or receive contributions for the candidate is not considered a contribution to or an expenditure by or on behalf of the candidate for the purposes of the limitations specified in this section.

(g) All contributions made by any person directly or indirectly to or for the benefit of a particular candidate or that candidate's political committee, which are in any way earmarked, encumbered, or otherwise directed through an intermediary or conduit to that candidate or political committee, shall be treated as contributions from that person to that candidate or political committee and shall be subject to the limitations established by this section.

(h)(1) No candidate or member of the immediate family of a candidate may make a loan or advance from his or her personal funds for use in connection with a campaign of that candidate for nomination for election, or for election, to a public office unless that loan or advance is evidenced by a written instrument fully disclosing the terms, conditions, and parts to the loan or advance. The amount of any loan or advance shall be included in computing and applying the limitations contained in this section only to the extent of the balance of the loan or advance that is unpaid at the time of determination.

(2) For the purposes of this subsection, the term "immediate family" means the candidate's spouse, parent, brother, sister, or child, and the spouse of a candidate's parent, brother, sister, or child.

(i) No contributions made to support or oppose initiative or referendum measures shall be affected by the provisions of this section.

(Apr. 27, 2012, D.C. Law 19-124, § 333, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.34. Partnership contributions.

(a) A contribution by a partnership shall be attributed to each partner:

(1) In direct proportion to his or her share of the partnership profits, according to instructions that shall be provided by the partnership to the political committee or candidate; or

(2) By agreement of the partners, as long as:

(A) Only the profits of the partners to whom the contribution is attributed are reduced (or losses increased); and

(B) These partners' profits are reduced (or losses increased) in proportion to the contribution attributed to each of them.

(b) A contribution by a partnership shall not exceed the limitations on contributions pursuant to this part. No portion of such contribution may be made from the profits of a corporation that is a partner.

(Apr. 27, 2012, D.C. Law 19-124, § 334, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

Part E

PROHIBITED ACTIVITIES AND ENFORCEMENT.

§ 1-1163.35. Penalties.

(a)(1) Any person who violates any provision of parts A through E of this subchapter or of subchapter I of Chapter 10 of this title [§ 1-1001.01 et seq.], may be assessed a civil penalty by the Elections Board under paragraph (2) of this subsection of not more than \$200, or 3 times the amount of an unlawful contribution, expenditure, gift, honorarium, or receipt of outside income, whichever is greater, for each such violation. Each occurrence of a violation of parts A through E of this subchapter and each day of noncompliance with a disclosure requirement of parts A through E of this subchapter or an order of the Elections Board shall constitute a separate offense.

(2) A civil penalty shall be assessed by the Elections Board by order only after the person charged with a violation has been given an opportunity for a hearing, and the Elections Board has determined, by decision incorporating its findings of facts, that a violation did occur, and the amount of the penalty. Any hearing under this section shall be of record and shall be held in accordance with Chapter 5 of Title 2.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, the Elections Board may issue a schedule of fines for violations of Parts A through E of this subchapter, which may be imposed ministerially by the Director of Campaign Finance. A civil penalty imposed under the authority of this paragraph may be reviewed by the Elections Board in accordance with the provisions of paragraph (2) of this subsection. The aggregate set of penalties imposed under the authority of this paragraph may not exceed \$2,000.

(4) If the person against whom a civil penalty is assessed fails to pay the penalty, the Elections Board shall file a petition for enforcement of its order assessing the penalty in the Superior Court of the District of Columbia. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall be forthwith sent by registered or certified mail to the respondent and his attorney of record, and if the respondent is a political, exploratory, inaugural, transition, or legal defense committee, to the chairman of the committee, and then the Elections Board shall certify and file in court the record upon which the order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order and the decision of the Elections Board or it may remand the proceedings to the Elections Board for further action as it may direct. The court may determine de novo all issues of law, but the Election Board's findings of fact, if supported by substantial evidence, shall be conclusive.

(b) Except as provided in subsection (c) of this section, any person who violates any of the provisions of parts A through E of this subchapter shall be fined not more than \$5,000, or shall be imprisoned for not longer than 6 months, or both.

(c) Any person who knowingly files or causes to be filed any false or misleading statement, report, voucher, or other paper, or makes any false or misleading statement to the Elections Board, shall be fined not more than \$10,000, or shall be imprisoned for not longer than 5 years, or both.

(d) Prosecutions of violations of parts A through E of this subchapter shall be brought by the United States Attorney for the District of Columbia in the name of the United States.

(e) All actions of the Elections Board or of the United States Attorney for the District of Columbia to enforce the provisions of parts A, B, D, and E of this subchapter must be initiated within 6 years of the actual occurrence of the alleged violation.

(Apr. 27, 2012, D.C. Law 19-124, § 335, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.36. Prohibition on the use of District government resources for campaign-related activities.

(a) No resources of the District of Columbia government, including the expenditure of funds, the personal services of employees during their hours of work, and nonpersonal services, including supplies, materials, equipment, office space, facilities, and telephones and other utilities, shall be used to support or oppose any candidate for elected office, whether partisan or nonpartisan, or to support or oppose any initiative, referendum, or recall measure, including a charter amendment referendum conducted in accordance with § 1-203.03.

(b)(1) This section shall not prohibit the Mayor, the Chairman and members of the Council, or the President and members of the State Board of Education from expressing their views on a District of Columbia election as part of their official duties.

(2) This subsection shall not be construed to authorize any member of the staff of the Mayor, the Chairman and members of the Council, or the President and members of the State Board of Education, or any other employee of the executive or legislative branch to engage in any activity to support or oppose any candidate for elected office, whether partisan or nonpartisan, an initiative, referendum, or recall measure during their hours of work, or the use of any nonpersonal services, including supplies, materials, equipment, office space, facilities, telephones and other utilities, to support or oppose an initiative, referendum, or recall matter.

(Apr. 27, 2012, D.C. Law 19-124, § 336, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

§ 1-1163.37. Document under oath.

(a) Notwithstanding any other provisions of this subchapter, neither the Elections Board, or any of its officers or employees, nor the Director of Campaign Finance, or any of his or her officers or employees, may require that a document be sworn under oath unless the Elections Board and Director of Campaign Finance maintain at the place of receipt of such documents and during regular business days and hours, a notary public to administer such oaths.

(b) If no such notary public is available, persons wishing to file documents for which an oath is requested may, in lieu thereof, affirm by their signature that their statements are true under penalty of § 1-1163.35.

(Apr. 27, 2012, D.C. Law 19-124, § 337, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

Part F
CONSTITUENT SERVICES.

§ 1-1163.38. Constituent services.

(a) The Mayor, the Chairman of the Council, and each member of the Council may establish constituent-service programs within the District. The Mayor, the Chairman of the Council, and each member of the Council may finance the operation of these programs with contributions from persons; provided, that contributions received by the Mayor, the Chairman of the Council, and each member of the Council do not exceed an aggregate amount of \$40,000 in any one calendar year. The Mayor, the Chairman of the Council, and each member of the Council may expend a maximum of \$40,000 in any one calendar year for constituent service programs. No person shall make any contribution which, and neither the Mayor, the Chairman of the Council, nor any member of the Council shall receive any contribution from any person which, when aggregated with all other contributions received from such person, exceed \$500 per calendar year; provided, that such \$500 limitation shall not apply to contributions made by the Mayor, the Chairman of the Council, or any member of the Council for the purpose of funding his or her own constituent-service program. The Mayor, the Chairman of the Council, and each member of the Council shall file a quarterly report of all contributions received and monies expended in accordance with this subsection with the Director of Campaign Finance.

(b)(1) Funds raised pursuant to this section shall be expended only for an activity, service, or program which provides emergency, informational, chari-

table, scientific, educational, medical, or recreational services to the residents of the District of Columbia and which expenditure accrues to the primary benefit of residents of the District of Columbia.

(2) Allowable expenditures include:

- (A) Funeral arrangements;
- (B) Emergency housing and other necessities of life;
- (C) Past due utility payments;
- (D) Food and refreshments or an in-kind equivalent on infrequent occasions;

(E) Community events sponsored by the constituent-service program or an entity other than the District government; and

(F) Community-wide events.

(3) Disallowable expenditures include:

(A) Promoting or opposing, as a primary purpose, a political party, committee, candidate, or issue;

(B) Fines and penalties inuring to the District;

(C) Any expenditure of cash;

(E) Sponsorships for political organizations; and

(F) Any mass mailing within the 90-day period immediately preceding a primary, special, or general election by a member of the Council, or the Mayor, who is a candidate for office.

(c) Upon the request of any member of the Council, the Mayor shall provide the member with suitable office space in a publicly owned building for the operation of a constituent-service program office located in the ward represented by the member. Each at-large member of the Council shall be offered constituent-service office space located in a ward of the member's choice. Members shall be provided with space of approximately equivalent square footage, and in similar proximity to commercial corridors and public transportation, where practicable. The space provided shall also be easily accessible by persons with disabilities or persons who are elderly. Any space provided shall not be counted as an in-kind contribution. Furnishings, equipment, telephone service, and supplies to this office space shall be provided from funds other than appropriated funds of the District government.

(d) Every constituent-service program shall have a chairman and a treasurer. No contribution and no expenditure shall be accepted or made by or on behalf of a constituent-service program at a time when there is a vacancy in the office of its treasurer and no other person has been designated and has agreed to perform the functions of treasurer. No expenditure shall be made for or on behalf of a constituent-service program without the authorization of its chairman or treasurer or their designated agents.

(e) Contributions of personal property from persons to the Mayor or to any members of the Council or contributions of the use of personal property shall be valued, for purposes of this section, at the fair market value of the property, not to exceed \$1,000 per calendar year at the time of the contribution. Contributions made or received pursuant to this section shall not be applied against the limitation on political contributions established by § 1-1163.33.

(f) All contributions and expenditures made by persons to the Mayor, Chairman of the Council, and each member of the Council as provided by

subsection (a) of this section, and all expenditures made by the Mayor, Chairman of the Council, and each member of the Council as provided by subsection (a) of this section, shall be reported to the Director of Campaign Finance quarterly on forms that the Director of Campaign Finance shall prescribe. The forms must prescribe itemized reporting of expenditures. All of the record-keeping requirements of this subchapter shall apply to contributions and expenditures made under this section. At the time of termination, any excess funds shall either be used to retire the debts of the program or donated to an nonprofit organization, within the meaning of the Internal Revenue Code, and operating in good standing in the District of Columbia for a minimum of one calendar year prior to the date of donation.

(g) Activities authorized by this section may be carried on at any location in the District; provided, that employees do not engage in constituent-service fundraising activities while on duty.

(h) Violations of this part shall be subject to the penalties set forth in § 1-1162.21.

(Apr. 27, 2012, D.C. Law 19-124, § 338, 59 DCR 1862.)

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-1161.01.

Subchapter IV. Transition Provisions; Applicability.

§ 1-1164.01. Transition provisions; applicability.

(a) Subchapter II, parts A and B, of this chapter shall apply as of April 27, 2012, except that neither the Ethics Board or the Director of Government Ethics shall receive, investigate, or adjudicate violations of the Code of Conduct, or issue advisory opinions, conduct ethics training, or issue ethics manuals until October 1, 2012.

(b) Subchapter II, part C, of this chapter shall apply as of April 27, 2012, except that the delivery of statements required by § 1-1162.23(c)(2)(C) shall be delivered to the Elections Board until October 1, 2012.

(c) Subchapter II, part D, of this chapter shall apply as of October 1, 2012, [.]

(d) Subchapter II, part E, of this chapter shall apply as of April 27, 2012, except that the enforcement of the provisions of part E shall be enforced by the Office of Campaign Finance until October 1, 2012.

(e) Subchapter III, parts A and B, of this chapter shall apply as of April 27, 2012.

(f) Subchapter III, part C, of this chapter shall apply as of October 1, 2012.

(g) Subchapter III, part D, of this chapter shall apply as of April 27, 2012.

(h) Subchapter III, part E, of this chapter shall apply as of April 27, 2012.

(i) Subchapter III, part F, of this chapter shall apply as of April 27, 2012.

(j) [Reserved].

(k) [Reserved].

(l) This subchapter shall apply as of April 27, 2012.

(m) This chapter shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

(Apr. 27, 2012, D.C. Law 19-124, § 601, 59 DCR 1862.)

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Clarification Emergency Amendment Act of 2012 (D.C. Act 19-371, May 16, 2012, 59 DCR 5711).

For temporary (90 day) addition of section, see § 3 of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Clarification Emergency Amendment Act of 2012 (D.C. Act 19-371, May 16, 2012, 59 DCR 5711).

For temporary (90 day) amendment of section, see § 1072(d) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 1072(d) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

CHAPTER 11B. PROHIBITION ON GOVERNMENT EMPLOYEE ENGAGEMENT
IN POLITICAL ACTIVITY.

Sec.

1-1171.01. Definitions.

1-1171.02. Political activity authorized; prohibitions.

1-1171.03. Political activities on duty; prohibition.

Sec.

1-1171.04. Enforcement.

1-1171.05. Criminal penalties.

1-1171.06. Rules.

1-1171.07. Applicability.

§ 1-1171.01. Definitions.

For the purposes of this chapter, the term:

(1) “Board” means the Board of Elections and Ethics established by § 1-1001.03.

(2) “Employee” means:

(A) Any individual paid by the District government from grant or appropriated funds for his or her services or holding office in the District of Columbia, other than the following:

- (i) Employees of the courts of the District of Columbia;
- (ii) The Mayor;
- (iii) The Attorney General, after January 1, 2014;
- (iv) The members of the Council;
- (v) Advisory Neighborhood Commissioners;
- (vi) Members of the State Board of Education;

(B) A member of a board or commission who is nominated for a position pursuant to § 1-523.01(e); and

(C) A member of a board or commission who is nominated for a position pursuant to § 1-523.01(f), when the member is engaged in political activity that relates to the subject matter that the member’s board or commission regulates.

(3) “Partisan political office” means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude any office or position within a political party or affiliated organization.

(4)(A) “Political activity” means any activity directed toward the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative, or referendum.

(B)(i) The Board of Elections and Ethics may, by rule, define certain basic activities as nonpolitical activities.

(ii) The term “nonpolitical activities” shall include:

- (I) Media inquiries;
- (II) Answering questioners; and
- (III) Scheduling.

(5)(A) “Political contribution” means:

(i) A gift, subscription, loan, advance, or deposit of money, or anything of value, made for any political purpose;

(ii) A contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

(iii) A payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(iv) The provision of personal services, paid or unpaid, for any political purpose.

(B) The term “political contribution” shall not include the value of services provided without compensation by any individual on behalf of any candidate, campaign, political party, or partisan political group.

(Mar. 31, 2011, D.C. Law 18-335, § 2, 58 DCR 599.)

Cross references. — Hatch Act retention, § 1-625.01.

Legislative history of Law 18-335. — Law 18-335, the “Prohibition on Government Employee Engagement in Political Activity Act of 2010,” was introduced in Council and assigned

Bill No. 18-460. The Bill was adopted on first and second readings on Nov. 23, 2010, and Dec. 21, 2010, respectively. Signed by the Mayor on Jan. 12, 2011, it was assigned Act No. 18-679 and transmitted to Congress for its review. D.C. Law 18-335 became effective on Mar. 31, 2011.

§ 1-1171.02. Political activity authorized; prohibitions.

(a) An employee may take an active part in political management or in political campaigns; provided, that an employee shall not:

(1) Use his official authority or influence for the purpose of interfering with or affecting the result of an election;

(2) Knowingly solicit, accept, or receive a political contribution from any person, except if the employee has filed as a candidate for political office;

(3) File as a candidate for election to a partisan political office; or

(4) Knowingly direct, or authorize anyone else to direct, that any subordinate employee participate in an election campaign or request a subordinate to make a political contribution.

(b) The Mayor and each member of the Council may designate one employee while on leave to perform any of the functions described in subsection (a)(2) of this section; provided, that:

(1) The employee shall not perform the activities while the employee is on duty or in any room or building occupied in the discharge of official duties in the District government, including any agency or instrumentality thereof;

(2) Any designation pursuant to this subsection shall be made in writing to the Secretary of the District of Columbia or the Secretary to the Council;

(3) Any designated employee shall file a report within 15 days of being designated and as otherwise required pursuant to § 1-1106.02; and

(4) The Mayor and the Council shall issue standards of conduct implementing this subsection.

(c) An employee or candidate for partisan political office shall not knowingly request, or authorize anyone else to request, that any subordinate, or potential future subordinate, employee participate in an election campaign or make a political contribution.

(Mar. 31, 2011, D.C. Law 18-335, § 3, 58 DCR 599.)

Legislative history of Law 18-335. — See note to § 1-1171.01.

§ 1-1171.03. Political activities on duty; prohibition.

An employee shall not engage in political activity:

- (1) While the employee is on duty;
- (2) In any room or building occupied in the discharge of official duties in the District government, including any agency or instrumentality thereof;
- (3) While wearing a uniform or official insignia identifying the office or position of the employee; or
- (4) Using any vehicle owned or leased by the District of Columbia, including any agency or instrumentality thereof.

(Mar. 31, 2011, D.C. Law 18-335, § 4, 58 DCR 599.)

Legislative history of Law 18-335. — See note to § 1-1171.01.

§ 1-1171.04. Enforcement.

(a) The Board of Elections and Ethics may:

(1)(A) Investigate on its own initiative, or upon written complaint under oath by any individual, alleged violations of any provision of this chapter; and

(B) Hold hearings when it considers it necessary to investigate violations; and

(2)(A) Upon application made by any employee, and within a reasonable period of time, provide an advisory opinion, with respect to any specific transaction or activity inquired of, as to whether the transaction or activity would constitute a violation of any provision of this chapter.

(B) An advisory opinion shall be issued in accordance with the rules of the Board.

(C) The Board shall publish a concise statement of each request for an advisory opinion, without identifying the person seeking the opinion, in the District of Columbia Register within 20 days of its receipt. Comments on requested opinions shall be received by the Board for a period of at least 15 days following publication in the District of Columbia Register. The Board may waive the advance notice and public comment provisions if it finds that the issuance of the advisory opinion constitutes an emergency necessary for the immediate preservation of the public peace, health, safety, welfare, or morals.

(D) Advisory opinions shall be published in the District of Columbia Register within 30 days of their issuance; provided, that the identity of any person requesting an advisory opinion shall not be disclosed in the District [of] Columbia Register without prior consent in writing. When issued, an advisory opinion shall be deemed to be an order of the Board, reviewable in the Superior Court of the District of Columbia by any interested person adversely affected thereby.

(E) A employee to whom an advisory opinion is rendered and who, after the issuance of an advisory opinion, acts in good faith in accordance with its

provisions and findings shall not, as a result of such actions, be subject to any sanctions under this section.

(b)(1) After finding that a violation of this chapter has occurred, the Board may:

(A) Impose a civil penalty not to exceed \$2,000 for each violation;

(B) Disqualify a person from appointment as an election monitor or from acting in any capacity at the polls on the day of an election if the Board finds that the person has knowingly violated any provision of this chapter; and

(C) Suspend, with or without pay, or remove a person from employment by the District government.

(2) The Board shall refer any case where there is probable cause of a willful violation of this chapter for prosecution under § 1-1171.05.

(3)(A) The sanctions set forth in paragraph (1) of this subsection shall be assessed by the Board by written order:

(i) Only after the person charged with a violation has been given an opportunity for a hearing; and

(ii) Setting forth its findings of facts, that a violation did occur, and the amount of the penalty.

(B) A hearing under this section shall be of record and shall be held in accordance with § 2-509.

(4) If the person against whom a civil penalty is imposed under subsection (b)(1) of this section fails to pay the penalty, the Board shall file a petition for enforcement of its order imposing the penalty in the Superior Court of the District of Columbia. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall be forthwith sent by registered or certified mail to the respondent and his attorney of record, and, thereupon, the Board shall certify and file in the court the record upon which the order sought to be enforced was issued. The court may enter a judgment enforcing, modifying, enforcing as so modified, or setting aside, in whole or in part, the order and the decision of the Board or it may remand the proceedings to the Board for such further action as it may direct. The court may determine de novo all issues of law, but the Board's findings of fact, if supported by substantial evidence, shall be conclusive.

(Mar. 31, 2011, D.C. Law 18-335, § 5, 58 DCR 599.)

Legislative history of Law 18-335. — See note to § 1-1171.01.

§ 1-1171.05. Criminal penalties.

(a) A willful violation of § 1-1171.02 shall be a misdemeanor and, upon conviction, be subject to:

(1) A fine not to exceed \$2,000 for each violation or triple the amount of any improper payment or contributions received, whichever is greater;

(2) Imprisonment not to exceed 180 days; or

(3) Both.

(b) In a prosecution for an offense pursuant to subsection (a) of this section,

it shall be an affirmative defense that the person so charged reasonably relied on an advisory opinion issued under § 1-1171.04(a)(2).

(Mar. 31, 2011, D.C. Law 18-335, § 6, 58 DCR 599.)

Legislative history of Law 18-335. — See note to § 1-1171.01.

§ 1-1171.06. Rules.

The Board of Elections and Ethics, pursuant to subchapter I of Chapter 5 of Title 2 [Chapter § 2-501 et seq.], may issue rules to implement the provisions of this chapter.

(Mar. 31, 2011, D.C. Law 18-335, § 7, 58 DCR 599.)

Legislative history of Law 18-335. — See note to § 1-1171.01.

§ 1-1171.07. Applicability.

(a) This chapter shall apply upon enactment by the Congress of an act excluding the District of Columbia from the coverage of 5 U.S.C. §§ 7321 through 7326 (Hatch Act).

(b) This chapter shall apply upon inclusion of its fiscal effect in an approved budget and financial plan.

(Mar. 31, 2011, D.C. Law 18-335, § 8, 58 DCR 599.)

Cross references. — Hatch Act retention, § 1-625.01.

Legislative history of Law 18-335. — See note to § 1-1171.01.

Editor's notes. — Congress enacted and the

President signed Public Law 112-230 on December 28, 2012, excluding the District of Columbia from the coverage of 5 U.S.C. §§ 7321 through 7326 (Hatch Act).

CHAPTER 12. NOTARIES PUBLIC.

Sec.

- 1-1201. Appointment; representation of clients before government departments; license fee; rules.
- 1-1202. Term of office.
- 1-1203. Oath; bond.
- 1-1204. Seal.
- 1-1205. Filing of signature; depositing impression of seal; certification as to authenticity.
- 1-1206. Exemption from execution.
- 1-1207. Foreign bills of exchange.
- 1-1208. Inland bills of exchange; promissory notes and checks.
- 1-1209. Other acts for use and effect beyond District.

Sec.

- 1-1210. Certification of certain instruments; depositions; administration of oaths and affirmations; affidavits.
- 1-1211. Record of official acts; certified copies.
- 1-1212. Copy of record as evidence.
- 1-1213. Fees.
- 1-1214. Penalties for taking higher fees.
- 1-1215. Custody of records and official papers upon death, resignation, and removal from office.
- 1-1216. Certificates issued by Mayor.
- 1-1217. Authorization for appropriation; inclusion of expenses in Mayor's annual estimates.

§ 1-1201. Appointment; representation of clients before government departments; license fee; rules.

(a) The Mayor of the District of Columbia shall have power to appoint such number of notaries public, residents of said District, or whose sole place of business or employment is located within said District, as, in his discretion, the business of the District may require: Provided, that the appointment of any person as such notary public, or the acceptance of his commission as such, or the performance of the duties thereunder, shall not disqualify or prevent such person from representing clients before any of the departments of the United States government in the District of Columbia or elsewhere: Provided further, that such person so appointed as a notary public who appears to practice or represent clients before any such department is not otherwise engaged in government employ, and shall be admitted by the heads of such departments to practice therein in accordance with the rules and regulations prescribed for other persons or attorneys who are admitted to practice therein: And provided further, that no notary public shall be authorized to take acknowledgments, administer oaths, certify papers, or perform any official acts in connection with matters in which he is employed as counsel, attorney, or agent, or in which he may be in any way interested before any of the departments aforesaid.

(b) Each notary public before obtaining his commission, and for each renewal thereof, shall pay to the Director of the Department of Finance and Revenue of the District of Columbia a license fee of \$30: Provided, that no license fee shall be collected from any notary public in the service of the United States government or the District of Columbia government whose notarial duties are confined solely to government official business: And provided further, that no notary fee shall be collected at any time by a notary public who is exempted from the payment of the license fee. The Mayor is hereby authorized to refund, in the manner prescribed by law for the refunding of erroneously paid taxes, the amount of any fee erroneously paid or collected under this section. All proceeds collected pursuant to this section shall be deposited into the unrestricted fund balance of the General Fund of the District of Columbia.

(c) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, [§ 2-501 et seq.], may issue rules to carry out the provisions of this section and §§ 1-1202 to 1-1215, including rules to establish and amend fees.

(Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 558; June 29, 1906, 34 Stat. 622, ch. 3616; Feb. 10, 1925, 43 Stat. 821, ch. 198; Dec. 16, 1944, 58 Stat. 810, ch. 597, § 1; June 22, 1983, D.C. Law 5-14, § 304, 30 DCR 2632; Sept. 24, 2010, D.C. Law 18-223, § 1072, 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, § 9020(b), 58 DCR 6226.)

Cross references. — Uniform Law: on Notarial Acts, see § 42-141 et seq.

Licensing of non-health related occupations and professions, see § 47-2853.04.

Prior Codifications. — 1981 Ed., § 1-801. 1973 Ed., § 1-501.

Effect of amendments. — D.C. Law 18-223 rewrote subsec. (c), which had read as follows: “(c) The Council of the District of Columbia shall issue rules necessary to carry out the provisions of §§ 1-1201 to 1-1215: Except, that the Mayor of the District of Columbia shall amend by rule from time to time the amount of any fee established pursuant to §§ 1-1201 to 1-1215.”

D.C. Law 19-21, in subsec. (b), inserted “All proceeds collected pursuant to this section shall be deposited into the unrestricted fund balance of the General Fund of the District of Columbia.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 1072 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 8003 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 8003 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 5-14. — Law 5-14 was introduced in Council and assigned Bill No. 5-74, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on April 12, 1983 and April 26, 1983, respectively. Signed by the Mayor on May 4, 1983, it was assigned Act No. 5-29 and transmitted to both Houses of Congress for its review.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 1-301.01.

Short title. — Short title: Section 1071 of D.C. Law 18-223 provided that subtitle H of

title I of the act may be cited as the “Notaries Public Authentications and License Fee Amendment Act of 2010”.

References in text. — Pursuant to the Office of the Chief Financial Officer’s “Notice of Public Interest” published in the April 18, 1997, issue of the District of Columbia Register (44 DCR 2345) the Office of Tax and Revenue assumed all of the duties and functions previously performed by the Department of Finance and Revenue, as set forth in Commissioner’s Order 69-96, dated March 7, 1969. This action was made effective January 22, 1997, *nunc pro tunc*.

New implementing regulations. — New implementing regulations: Section 302 of D.C. Law 5-14 also amended the Notaries Public Regulation (Reg. 73-13; 25 DCRR 3).

Editor’s notes. — Mayor authorized to issue rules: Section 1102 of D.C. Law 5-14 provided that the Mayor shall issue rules necessary to carry out the provisions of the act.

Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of

Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue were transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

Inapplicability to matters before Department of Interior: Section 3 of The Act of June 3, 1948, 62 Stat. 301, ch. 392, provided that the last proviso of subsection (a) of this section shall not apply to matters before the Department of the Interior.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(20) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

Notary, who is stock-holder and president of bank, may protest its paper. Code, §§ 558, 1058, D.C. Code 1929, T. 4, § 11, T. 9, § 3. *Roberts v. International Bank*, 25 F.2d 214, 1928 U.S. App. LEXIS 2918 (1928).

Under section 558, Code D.C., 31 Stat. 1279, c. 854, which after giving the President power to appoint notaries public in the District of Columbia, by its first proviso permits such notaries to practice before the executive departments, and by its second proviso states that "no notary public" shall act in his official capacity

"in connection with any matter in which he is employed as attorney before any such department," a notary appointed in one of the states is not authorized to certify in his official capacity to an instrument filed by him in one of the departments as attorney for the party to whom he has administered the oath; and, when such an instrument is an opposition to an application for registration of a trademark, a demurrer thereto on such ground will be sustained and the opposition dismissed. *Hall's Safe Co. v. Herring-Hall-Marvin Safe Co.*, 31 App.D.C. 498, 1908 U.S. App. LEXIS 5655 (1908).

§ 1-1202. Term of office.

Said notaries public shall hold their offices for the period of 5 years, removable at discretion.

(Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 559.)

Section references. — This section is referred to in § 1-1201.

Prior Codifications. — 1981 Ed., § 1-802. 1973 Ed., § 1-502.

§ 1-1203. Oath; bond.

Each notary public, before entering upon the duties of his office, shall take the oath prescribed for civil officers in the District of Columbia, and shall give bond to the District of Columbia in the sum of \$2,000, with security, to be approved by the Mayor of the District of Columbia or his designated agent, for

the faithful discharge of the duties of his office. Where any such notary public is an officer or employee of the government of the District of Columbia whose notarial duties are confined solely to government official business, any bond covering such officer or employee for the faithful performance of such notarial duties obtained by the Mayor of the District of Columbia pursuant to the authority conferred on him by law shall be in lieu of the bond required by the 1st sentence of this section.

(Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 561; June 25, 1936, 49 Stat. 1921, ch. 804; Dec. 16, 1944, 58 Stat. 811, ch. 597, § 2; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 7, 1955, 69 Stat. 281, ch. 280, § 5; July 5, 1966, 80 Stat. 263, Pub. L. 89-493, § 1.)

Cross references. — Oaths and affirmations, see § 1-501.

Section references. — This section is referred to in §§ 1-1201 and 1-1217.

Prior Codifications. — 1981 Ed., § 1-803. 1973 Ed., § 1-504.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-1204. Seal.

Each notary public shall provide a notarial seal with which he shall authenticate all his official acts.

(Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 562.)

Section references. — This section is referred to in § 1-1201.

Prior Codifications. — 1981 Ed., § 1-804. 1973 Ed., § 1-505.

§ 1-1205. Filing of signature; depositing impression of seal; certification as to authenticity.

Each notary public shall file his signature and deposit an impression of his official seal with the Mayor of the District of Columbia or his designated agent, and the Mayor or his designated agent may certify to the authenticity of the signature and official seal of the notary public.

(Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 563; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 263, Pub. L. 89-493, § 2.)

Section references. — This section is referred to in § 1-1201.

Prior Codifications. — 1981 Ed., § 1-805. 1973 Ed., § 1-506.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished

the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-1206. Exemption from execution.

A notary's official seal and his official documents shall be exempt from execution.

(Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 564.)

Section references. — This section is referred to in §§ 1-1201 and 1-1217.

Prior Codifications. — 1981 Ed., § 1-806. 1973 Ed., § 1-507.

§ 1-1207. Foreign bills of exchange.

Notaries public shall have authority to demand acceptance and payment of foreign bills of exchange and to protest the same for nonacceptance and nonpayment, and to exercise such other powers and duties as by the law of nations and according to commercial usages notaries public may do.

(Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 565.)

Section references. — This section is referred to in § 1-1201.

Prior Codifications. — 1981 Ed., § 1-807. 1973 Ed., § 1-508.

§ 1-1208. Inland bills of exchange; promissory notes and checks.

Notaries public may also demand acceptance of inland bills of exchange and payment thereof, and of promissory notes and checks, and may protest the same for nonacceptance or nonpayment, as the case may require. And on the original protest thereof he shall state the presentment by him of the same for acceptance or payment, as the case may be, and the nonacceptance or nonpayment thereof, and the service of notice thereof on any of the parties to the same, and the mode of giving such notice, and the reputed place of business or residence of the party to whom the same was given; and such protest shall be prima facie evidence of the facts therein stated. And any notary public failing to comply herewith shall pay a fine of \$10 to the District of Columbia, to be collected in the Superior Court of the District of Columbia as are other fines and penalties.

(Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 567; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Section references. — This section is referred to in § 1-1201.

Prior Codifications. — 1981 Ed., § 1-808. 1973 Ed., § 1-509.

§ 1-1209. Other acts for use and effect beyond District.

Notaries public may also perform such other acts, for use and effect beyond the jurisdiction of the District, as according to the law of any state or territory of the United States or any foreign government in amity with the United States may be performed by notaries public.

(Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 566.)

Section references. — This section is referred to in § 1-1201.

Prior Codifications. — 1981 Ed., § 1-809. 1973 Ed., § 1-510.

§ 1-1210. Certification of certain instruments; depositions; administration of oaths and affirmations; affidavits.

Each notary public shall have power to take and to certify the acknowledgment or proof of powers of attorney, mortgages, deeds, and other instruments of writing, to take depositions and to administer oaths and affirmations and also to take affidavits to be used before any court, judge, or officer within the District.

(Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 568; June 30, 1902, 32 Stat. 533, ch. 1329; Oct. 1, 1976, D.C. Law 1-87, § 2, 23 DCR 2544.)

Section references. — This section is referred to in §§ 1-1201 and 1-1211.

Prior Codifications. — 1981 Ed., § 1-810. 1973 Ed., § 1-511.

Legislative history of Law 1-87. — Law 1-87, the "Anti-Sex Discriminatory Language Act," was introduced in Council and assigned

Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976 and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

§ 1-1211. Record of official acts; certified copies.

Each notary public shall keep a fair record of all his official acts, except such as are mentioned in § 1-1210, and when required, shall give a certified copy of any record in his office to any person upon payment of the fees therefor.

(Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 569.)

Section references. — This section is referred to in § 1-1201.

Prior Codifications. — 1981 Ed., § 1-811. 1973 Ed., § 1-512.

§ 1-1212. Copy of record as evidence.

The certificate of a notary public, under his hand and seal of office, drawn from his record, stating the protest and the facts therein recorded, shall be evidence of the facts in like manner as the original protest.

(Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 570.)

Section references. — This section is referred to in § 1-1201.

Prior Codifications. — 1981 Ed., § 1-812. 1973 Ed., § 1-513.

§ 1-1213. Fees.

(a) The Mayor of the District of Columbia shall adjust from time to time the schedule of fees to be charged by notaries public. The Mayor shall adjust the schedule by rule to provide fees in amounts which, in the Mayor's judgment, will defray the notary public's necessary expenses in connection with performing his services.

(b) Until the schedule of fees is adjusted by the Mayor in accordance with subsection (a) of this section, the schedule of fees in subsection (c) of this section will be in effect.

(c) The fees of notaries public shall be:

(1) For taking an acknowledgement of proof of a deed or other instrument including the seal and writing of the certificate, \$2 for each signature;

(2) For administering an oath or for taking an affidavit, including the jurat and seal, \$2; or

(3) For any other notarial act, \$2.

(Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 571; June 30, 1902, 32 Stat. 533, ch. 1329; Mar. 8, 1984, D.C. Law 5-52, § 2, 30 DCR 5931.)

Section references. — This section is referred to in §§ 1-1201 and 1-1214.

Prior Codifications. — 1981 Ed., § 1-813. 1973 Ed., § 1-514.

Legislative history of Law 5-52. — Law 5-52 was introduced in Council and assigned Bill No. 5-222, which was referred to the Com-

mittee on Government Operations. The Bill was adopted on first and second readings on October 4, 1983 and October 18, 1983, respectively. Signed by the Mayor on November 9, 1983, it was assigned Act No. 5-78 and transmitted to both Houses of Congress for its review.

§ 1-1214. Penalties for taking higher fees.

Any notary public who shall take a higher fee than is prescribed by § 1-1213 shall pay a fine of \$100 and be removed from office by the Superior Court of the District of Columbia.

(Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 572; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 263, Pub. L. 89-493, § 3; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, § 155(a).)

Section references. — This section is referred to in § 1-1201.

Prior Codifications. — 1981 Ed., § 1-814. 1973 Ed., § 1-515.

§ 1-1215. Custody of records and official papers upon death, resignation, and removal from office.

Upon the death, resignation, or removal from office of any notary public, his records, together with all his official papers, shall be deposited in the Office of the Mayor of the District of Columbia or his designated agent.

(Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 573; June 25, 1936, 49 Stat. 1921, ch.

804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 263, Pub. L. 89-493, § 4.)

Section references. — This section is referred to in § 1-1201.

Prior Codifications. — 1981 Ed., § 1-815. 1973 Ed., § 1-516.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-1216. Certificates issued by Mayor.

Certificates issued by the Mayor of the District of Columbia may be signed by the Executive Secretary.

(Dec. 16, 1944, 58 Stat. 811, ch. 597, § 4.)

Prior Codifications. — 1981 Ed., § 1-816. 1973 Ed., § 1-517.

Mayor's Orders. — Office of the Secretary established: See Mayor's Order 83-21, January 3, 1983.

Amendment of functions and duties of the Secretary: See Mayor's Order 84-51, February 29, 1984.

Editor's notes. — Office of Secretary to Board of Commissioners abolished: The Office of the Secretary to the Board of Commissioners of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners by Reorganization Plan No. 5 of 1952. Reorganization Order No. 41 of the Board of Commissioners, dated June 23, 1953, issued pursuant to that Plan, established as part of the Executive Office of the Board of Commissioners, under the direction and control of the Board, an Office of the Secretary to the Board of Commissioners to perform ministerial duties for the Board. The Order described the purpose and functions of the Office of Secretary and provided that the functions and positions of the previously existing Office of the Secretary to the Board be transferred to the new office, and that the previously existing Office of the Secretary be abolished. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 2 of the Commissioner, dated December 13, 1967, as

amended, established within the Executive Office of the Commissioner a Secretariat headed by an Executive Secretary. The Order transferred to the Secretariat certain functions, including the duties, powers and authorities of all officers and employees performing such functions and assigned to the Office of the Secretary as it existed immediately prior to December 13, 1967, and revoked all other orders inconsistent therewith.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-1217. Authorization for appropriation; inclusion of expenses in Mayor's annual estimates.

Appropriation is hereby authorized to be made to carry out the provisions of this section and §§ 1-1203 and 1-1206, and the Mayor of the District of Columbia is authorized to include in his annual estimates provision for all expenses incident to such purposes, including the purchase of equipment and supplies and the payment of salaries to personnel.

(Dec. 16, 1944, 58 Stat. 811, ch. 597, § 5; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); Mar. 3, 1979, D.C. Law 2-139, § 3205(c), 25 DCR 5740.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-817.
1973 Ed., § 1-518.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CHAPTER 13. SURVEYOR.

Sec.

- 1-1301. Salary; appointment; term of office.
- 1-1302. Oath.
- 1-1303. Appointment of Assistant Surveyor and other employees.
- 1-1304. Duties of Assistant Surveyor.
- 1-1305. Surveyor's office to be legal office of record of plats and subdivisions.
- 1-1306. Records, papers, and instruments to be kept and preserved by Surveyor.
- 1-1307. Records of divisions of squares and lots.
- 1-1308. Records deemed property of District; transfer of records upon vacancy in office.
- 1-1309. Typewritten records authorized.
- 1-1310. Scale of plats.
- 1-1311. Transcripts as evidence.
- 1-1312. Subdivision of United States squares.
- 1-1313. Orders regulating platting and subdividing; admission of plats and subdivisions to record.
- 1-1314. Public ways.
- 1-1315. Right-of-way through cemeteries.

Sec.

- 1-1316. Surveys for District.
- 1-1317. Order of survey to be speedily executed.
- 1-1318. Alteration of boundaries; change of surveys.
- 1-1319. Boundaries of lots to be marked.
- 1-1320. Subdivision plat; certification.
- 1-1321. Examination of subdivision dimensions; recording of subdivision.
- 1-1322. Reference to subdivisions.
- 1-1323. Regulation of alleys.
- 1-1324. Deficiency or excess in measurement of square.
- 1-1325. Party walls.
- 1-1326. Wall extending over lot line.
- 1-1327. Surveyor to certify and record location of party wall.
- 1-1328. Adjusting lines of buildings; certificate as evidence.
- 1-1329. Mayor to revise fees for Surveyor; notice of revision of fee schedule; inspection of fee schedule; employment of registered land surveyor.

§ 1-1301. Salary; appointment; term of office.

The Surveyor of the District of Columbia shall receive a salary in lieu of fees, and shall be appointed by the Mayor of the District of Columbia for a term of 4 years, unless sooner removed for cause, and shall be under the direction and control of the said Mayor.

(Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1577.)

Prior Codifications. — 1981 Ed., § 1-901.
1973 Ed., § 1-601.

Editor's notes. — History of Office of Surveyor: The Office of the Surveyor was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 27 of the Board of Commissioners, dated April 3, 1953, abolished the previous existing Office of the Surveyor including the office of the head thereof, and established the Office of the Surveyor headed by a Surveyor, under the direction and control of the Engineer Commissioner. All positions under the previous Office of Surveyor were transferred to the new Office with certain named exceptions. This Order was issued pursuant to Reorganization Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. There was established within the District of Columbia Department of Transportation the Office of Surveyor

by Reorganization Plan No. 2 of 1982, effective December 8, 1982. The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the Dis-

trict of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C.

Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

Landowner, which applied for closing of alley bordering its property and which was told by district surveyor that fair market value of area to be closed was \$65 per square foot, was

deemed imputed with knowledge as to scope of surveyor's authority. *District of Columbia v. McGregor Properties, Inc.*, 479 A.2d 1270, 1984 D.C. App. LEXIS 461 (1984).

§ 1-1302. Oath.

The Surveyor shall take and subscribe an oath or affirmation before the Mayor that he will faithfully and impartially discharge the duties of his office, which oath shall be deposited with the Mayor of the District of Columbia.

(Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1578; June 28, 1935, 49 Stat. 431, ch. 332, § 2.)

Prior Codifications. — 1981 Ed., § 1-902. 1973 Ed., § 1-602.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Act Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-1303. Appointment of Assistant Surveyor and other employees.

The Mayor of the District of Columbia, on the recommendation of the Surveyor, is hereby authorized to appoint 1 Assistant Surveyor, and such employees as may in the judgment of the Mayor of the District of Columbia be required for the Surveyor's office and operation.

(Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1579.)

Prior Codifications. — 1981 Ed., § 1-903. 1973 Ed., § 1-603.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-1304. Duties of Assistant Surveyor.

The Assistant Surveyor shall take the same oath his principal is required to take, and may, during the continuance of his office, discharge and perform any of the official duties of his principal.

(Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1592; June 28, 1935, 49 Stat. 431, ch. 332, § 3.)

Prior Codifications. — 1981 Ed., § 1-904. 1973 Ed., § 1-604.

§ 1-1305. Surveyor's office to be legal office of record of plats and subdivisions.

The Office of the Surveyor of the District shall be the legal office of record of the plats and subdivisions of all private property in the District of Columbia and of all property belonging to the District of Columbia. The copies of all records of the division of squares and lots made between the public and the original proprietors and all plats, papers, books, maps, and records now in the Office of the Surveyor shall remain therein.

(Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1574; June 30, 1902, 32 Stat. 544, ch. 1329.)

Prior Codifications. — 1981 Ed., § 1-905. 1973 Ed., § 1-605.

CASE NOTES

ANALYSIS

In general.
Purpose.

In general.

Although subdivision plats must be duly recorded in office of surveyor, once that requirement has been met, District of Columbia statutes do not prohibit an owner from incorporating a revised copy of the same plat in another recordable instrument in order to impress, through a suitable endorsement on the plat, a servitude upon a single lot in the original subdivision and, in such circumstances, the revised plat is being used only as method of imposing a servitude, and not to establish the areas and boundaries of lots in the subdivision. D.C. Code §§ 1-605, 45-506. Case v. Morrisette, 475 F.2d 1300, 1973 U.S. App. LEXIS 11451 (C.A.D.C. 1973).

Where deed described parcel as lot on subdivision plat recorded in office of surveyor and referred to it as area for parking as shown on

revised plat recorded with declaration of covenants, purchaser was placed on notice of inscription affecting lot and either such constructive notice or purchaser's actual knowledge was sufficient to require enforcement of equitable servitude against purchaser and it was immaterial that copy of revised plat bearing inscription was recorded in office of recorder of deeds rather than with surveyor. D.C. Code §§ 1-605, 45-506. Case v. Morrisette, 475 F.2d 1300, 1973 U.S. App. LEXIS 11451 (C.A.D.C. 1973).

Where purchaser took conveyance describing land by lots and block numbers "as per plat of said subdivision" which plat showed that described lots abutted streets in subdivision, fact that streets on which lots abutted had not been opened and were never opened and were never dedicated by recording of plat in surveyor's office as provided by statute did not affect operation of rule under which purchaser took title to middle of street or to full width of streets where streets were shown on edge of plat with no land in subdivision abutting on other side.

Faulks v. Schrider, 99 F.2d 370, 1938 U.S. App. LEXIS 2881 (1938).

Purpose.

Principal purpose of filing plat in office of

surveyor is to establish areas and boundaries of lots in the subdivision. D.C. Code §§ 1-605, 45-506. Case v. Morrisette, 475 F.2d 1300, 1973 U.S. App. LEXIS 11451 (C.A.D.C. 1973).

§ 1-1306. Records, papers, and instruments to be kept and preserved by Surveyor.

The Surveyor shall keep his office in a room designated by the Mayor for the purpose, and shall not be engaged in the transaction of any business appertaining to any other office or appointment which may be held by him, and shall in his said office preserve and keep all such maps, charts, surveys, books, records, and papers relating to the District of Columbia, or to any of the avenues, streets, alleys, public spaces, squares, lots, and buildings thereon, or any of them, as shall for the purpose of being deposited in his office come into his hands or possession; and shall, in books provided or to be provided for that purpose, keep a true record of every survey, certificate, or account which shall be made, issued, or prepared by him, and also shall preserve and keep in good order and repair the instruments in his said office belonging to the District.

(Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1599.)

Cross references. — Designation of real property for assessment and taxation, records, see §§ 47-701 and 47-705.

Designation of real property for assessment and taxation, transcript of conveyances, see § 47-707.

Highway plans, maps and records, see §§ 9-103.02 and 9-101.13.

Prior Codifications. — 1981 Ed., § 1-906. 1973 Ed., § 1-606.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-1307. Records of divisions of squares and lots.

All records, or copies thereof, of the divisions of squares and lots heretofore made between the public and the original proprietors, or which are authorized by this chapter, shall be kept in the Office of the Surveyor of the District of Columbia, and the Surveyor shall put up, label, index, and preserve all the maps, charts, plats, plans, and other drawings and papers relating to the District of Columbia or which appertain to his office, and which may come to his office for deposit, record, or otherwise.

(Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1596.)

Prior Codifications. — 1981 Ed., § 1-907.

1973 Ed., § 1-607.

§ 1-1308. Records deemed property of District; transfer of records upon vacancy in office.

All papers, plats, books, maps, and records of his office shall be deemed the property of the District of Columbia, and shall constitute a part of the public records; and in all cases of vacancy in the office, by resignation or otherwise, they shall be transferred to his successor in office.

(Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1600; June 30, 1902, 32 Stat. 545, ch. 1329.)

Prior Codifications. — 1981 Ed., § 1-908. 1973 Ed., § 1-608.

§ 1-1309. Typewritten records authorized.

After May 18, 1910, the recording of all instruments filed for record in the Office of the Surveyor of the District of Columbia may be done with book typewriters.

(May 18, 1910, 36 Stat. 382, ch. 248.)

Prior Codifications. — 1981 Ed., § 1-909. 1973 Ed., § 1-609.

§ 1-1310. Scale of plats.

The plats and squares and subdivisions of the City of Washington shall be drawn upon a uniform scale of not less than 1 inch to 50 feet, and shall show the lines of all subdivisions of the squares as the same existed at the date of the completion of each square.

(Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1580.)

Prior Codifications. — 1981 Ed., § 1-910. 1973 Ed., § 1-610.

§ 1-1311. Transcripts as evidence.

All transcripts from such records certified by the Surveyor shall be prima facie evidence thereof.

(Mar. 3, 1901, 31 Stat. 1424, ch. 854, § 1575.)

Prior Codifications. — 1981 Ed., § 1-911. 1973 Ed., § 1-611.

§ 1-1312. Subdivision of United States squares.

Whenever the President shall deem it necessary to subdivide any square or lot belonging to the United States within the City of Washington, not reserved for public purposes, into convenient building lots or portions for sale and occupancy, and alleys for their accommodation, he may cause a plat to be made by the Surveyor in the manner prescribed in this chapter, which plat shall be recorded by the Surveyor; and the provisions of this chapter shall extend to the

lots, pieces, and parcels of ground contained in such plat as fully as to subdivisions made by individual proprietors.

(Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1594.)

Prior Codifications. — 1981 Ed., § 1-912. 1973 Ed., § 1-612.

§ 1-1313. Orders regulating platting and subdividing; admission of plats and subdivisions to record.

The Council of the District of Columbia is authorized and directed to make and publish such general orders as may be necessary to regulate the platting and subdividing of all lands and grounds in the District of Columbia under the jurisdiction of the Mayor; and no such plat or subdivision made in pursuance of such orders shall be admitted to record in the Office of the Surveyor of said District without an order to that effect indorsed thereon by the Mayor of said District.

(Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1601.)

Section references. — This section is referred to in §§ 1-1314 and 1-1321.

Prior Codifications. — 1981 Ed., § 1-913. 1973 Ed., § 1-613.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(21) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-1314. Public ways.

All spaces on any duly recorded plat of land thereon designated as streets, avenues, or alleys shall thereupon become public ways, provided they are made in conformity with § 1-1313.

(Mar. 3, 1901, 31 Stat. 1428, ch. 854, § 1602.)

Prior Codifications. — 1981 Ed., § 1-914. 1973 Ed., § 1-614.

§ 1-1315. Right-of-way through cemeteries.

If by the extension of any of the present streets or avenues or the opening of any public way it becomes necessary to traverse any grounds now used as a cemetery or place of burial, the Mayor is empowered to secure a right-of-way through the same by stipulation with the proprietors thereof.

(Mar. 3, 1901, 31 Stat. 1428, ch. 854, § 1603.)

Prior Codifications. — 1981 Ed., § 1-915. 1973 Ed., § 1-615.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-1316. Surveys for District.

Except as specifically provided for elsewhere in this chapter with respect to surveying work authorized to be performed by a registered land surveyor, it shall be the duty of the Surveyor to execute any surveying work for the District of Columbia without charge, on the order of the Mayor; and all fees for surveys made by the Surveyor or the Assistant Surveyor shall be paid over to the Collector of Taxes of the District of Columbia under regulations to be prescribed by the Mayor of the District of Columbia, and be covered into the Treasury of the United States as other revenues of the District are now; and the field notes of the Surveyor and his Assistant shall be preserved and shall be a part of the public property of the District of Columbia, and all records, plats, plans, and other papers or documents now existing, or hereafter made or secured by the Office of the said Surveyor, shall be delivered by each Surveyor to his successor in office, and no plat or survey of land shall be recorded in the Office of the Surveyor of the District of Columbia except it be certified to as correct by the Surveyor of said District, or a registered land surveyor.

(Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1591; Apr. 20, 1999, D.C. Law 12-261, § 5005(a), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 1-916. 1973 Ed., § 1-616.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Editor’s notes. — Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agen-

cies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of

the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue were transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-1317. Order of survey to be speedily executed.

The Surveyor shall, as speedily as possible, execute any order of survey made by any court or private individual of any lot or square within the City of Washington, or of any land within the District of Columbia outside of said City, and shall make due return of a true plat and certificate thereof.

(Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1590.)

Prior Codifications. — 1981 Ed., § 1-917. 1973 Ed., § 1-617.

§ 1-1318. Alteration of boundaries; change of surveys.

Whenever the proprietor of any tract or parcel of land in the District of Columbia shall desire or deem it necessary to subdivide or alter boundaries, or change the surveys of any such tract or parcel of land, such subdivision, alteration, or change shall be by the Surveyor of the District of Columbia, or his Assistant, only, and shall be entered in the plat book or books of said Surveyor. All such subdivisions, alterations, or changes shall be certified by the Surveyor, the party wishing such plat, and 2 competent witnesses, whose names shall be appended thereto.

(Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1595.)

Prior Codifications. — 1981 Ed., § 1-918. 1973 Ed., § 1-618.

§ 1-1319. Boundaries of lots to be marked.

The Surveyor shall, or a registered land surveyor may, on the request of the proprietor or proprietors of any square, lot, or piece of ground within the District of Columbia set out and mark the proper lines, and furnish to him, her, or them a certificate describing the dimensions and boundaries of the same, according to the plan.

(Mar. 3, 1901, 31 Stat. 1427, ch. 854, § 1598; Apr. 20, 1999, D.C. Law 12-261, § 5005(b), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 1-919.
1973 Ed., § 1-619.

legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 1-1316.

Legislative history of Law 12-261. — For

§ 1-1320. Subdivision plat; certification.

Whenever the proprietor of any square or lot shall deem it necessary to subdivide the same into convenient building lots or portions for sale and occupancy and alleys for their accommodation, he may cause a plat to be made by the Surveyor or a registered land surveyor, on which shall be expressed the dimensions and length of all the lines of such portions as are necessary for defining and laying off the same on the ground, and may certify such subdivision under his hand and seal, in the presence of 2 or more credible witnesses, upon the same plat or on a paper or parchment attached thereto.

(Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1581; Apr. 20, 1999, D.C. Law 12-261, § 5005(c), 46 DCR 3142.)

Cross references. — Condominium subdivisions, see § 42-2009.

Section references. — This section is referred to in § 1-1321.

Prior Codifications. — 1981 Ed., § 1-920.

1973 Ed., § 1-620.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 1-1316.

§ 1-1321. Examination of subdivision dimensions; recording of subdivision.

At the request of the proprietor the Surveyor shall examine whether the lots or parcels into which any square or lot may be subdivided as provided in § 1-1320 agree in dimensions with the whole of the square or lot so intended to be subdivided, and whether the dimensions expressed on the plat of subdivision be the true dimensions of the parts so expressed; and whether said lots or parcels conform to the general orders of the Council of the District of Columbia made under existing law or under authority of § 1-1313; and if upon such examination he shall find the plat correct he shall certify the same under his hand and seal to the Mayor with such remarks as appear to him necessary; but no such plat or subdivision shall be admitted to record in the Office of the Surveyor without an order to that effect, indorsed thereon by said Mayor.

(Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1582; June 30, 1902, 32 Stat. 544, ch. 1329.)

Prior Codifications. — 1981 Ed., § 1-921.
1973 Ed., § 1-621.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished

the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-1322. Reference to subdivisions.

When a subdivision of any square or lot shall be so certified, examined, and recorded, the purchaser of any part thereof or any person interested therein may refer to the plat and record for description in the same manner as to squares and lots divided between the Mayor and original proprietors.

(Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1583.)

Prior Codifications. — 1981 Ed., § 1-922. 1973 Ed., § 1-622.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

Where a plat is referred to in a deed as containing a description of land, the courses, distances and other particulars appearing in the plat are to be as much regarded, in ascertaining the true description of the land, and

intention of the parties, as if they had been expressly enumerated in the deed. D.C. Code 1940, §§ 1-605 to 1-622. *Howenstein Realty Corporation v. Richardson*, 135 F.2d 803, 1943 U.S. App. LEXIS 3421 (1943).

§ 1-1323. Regulation of alleys.

The ways, alleys, or passages laid out or expressed on any plat of subdivision shall be and remain at all times under the same police regulations as the alleys laid off by the Mayor on division with the original proprietors.

(Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1584; June 30, 1902, 32 Stat. 544, ch. 1329.)

Prior Codifications. — 1981 Ed., § 1-923. 1973 Ed., § 1-623.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-1324. Deficiency or excess in measurement of square.

Whenever the Surveyor or a registered land surveyor shall lay off any lot, or any parts into which a square or lot may be subdivided, as provided in this chapter, the Surveyor or a registered land surveyor shall measure the whole of that front of the square on which said lot or part lies, and if, on such admeasurement, the whole front of the square exceeds or falls short of the aggregate of the fronts of the lots on that side of the square, as the same are recorded, the Surveyor or a registered land surveyor shall, except in that portion of the City of Washington included within the limits of what formerly constituted the City of Georgetown, apportion such excess or deficiency among the lots or pieces on that front agreeably to their respective dimensions; and in that portion of the City of Washington included within the limits of what formerly constituted the City of Georgetown, the Surveyor or a registered land surveyor shall allow such excess or charge such deficiency to the highest numbered original lot on that front of the square, or apportion such excess or deficiency among any lots into which such highest numbered original lot may have been subdivided: provided, that wherever in the former City of Georgetown a square or block of land is intersected by the division line between 2 original additions to said City, the excess or deficiency found between the street lines and said division line shall be applied to the highest numbered original lot on each side of said division line, or apportioned among any lots into which such highest numbered original lot may have been subdivided.

(Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1585; June 30, 1902, 32 Stat. 544, ch. 1329; Apr. 20, 1999, D.C. Law 12-261, § 5005(d), 46 DCR 3142; Apr. 12, 2000, D.C. Law 13-91, § 114, 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-924. 1973 Ed., § 1-624.

Effect of amendments. — D.C. Law 13-91 inserted “a” following “Whenever the Surveyor or”, substituted “City of Georgetown, the Surveyor” for “City of Georgetown the Surveyor”, and validated previously made technical amendments.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 1-1316.

Legislative history of Law 13-91. — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

§ 1-1325. Party walls.

Whenever, on such admeasurement, the wall of a house previously erected by any proprietor shall appear to stand on the adjoining lot of any other person in part less than 7 inches in width thereon, such wall shall be considered as standing altogether on the land of such proprietor, who shall pay to the owner of the lot on which the wall may stand a reasonable price for the ground so

occupied, to be decided by arbitrators or a jury, as the parties interested may agree.

(Mar. 3, 1901, 31 Stat. 1425, ch. 854, § 1586.)

Section references. — This section is referred to in § 1-1326.

Prior Codifications. — 1981 Ed., § 1-925. 1973 Ed., § 1-625.

CASE NOTES

ANALYSIS

Creation and existence of right.

Evidence.

In general.

Jurisdiction.

Review.

Rights and liabilities of adjoining owners.

Rights and liabilities of purchasers.

Creation and existence of right.

There are but two lawful ways in which a party wall can be established—one by contract between the owners of the adjoining property, and the other by force of statute. *Walker v. Gish*, 43 S.Ct. 174, 1923 U.S. LEXIS 2484 (U.S. Dist. Col. 1923).

Where the owner of a lot has notice of the construction of a party wall by the owner of the adjoining lot, and stands by, and, without protest, permits the erection of the wall to proceed to completion, the law will imply an agreement on his part to accept the benefits thus tendered. *Walker v. Gish*, 43 S.Ct. 174, 1923 U.S. LEXIS 2484 (U.S. Dist. Col. 1923).

Where the owner of a lot on which a party wall extends accepts the wall by attaching his building thereto, he estops himself to complain of the trespass, and the mutual easement or servitude is as completely established as if the wall had been constructed under the authority of a statute or an express contract. *Walker v. Gish*, 43 S.Ct. 174, 1923 U.S. LEXIS 2484 (U.S. Dist. Col. 1923).

Evidence.

In action for one-half the cost of constructing a party wall, evidence sustained finding that wall which was constructed by the plaintiff on dividing line between his property and that which defendants held as trustees was suitable for use as a party wall. *Krupsaw v. Welch*, 34 F.Supp. 396, 1940 U.S. Dist. LEXIS 2821 (D.D.C.1940).

Evidence that plaintiff constructed substantial wall on dividing line between his property and that which defendants held as trustees, with knowledge of one of the defendants, that the wall was authorized by permit of building inspector who approved the work done, and that the defendants made use of the wall, sustained finding that wall was a "party wall,"

for one-half of the cost of which defendants, as trustees, were required to pay. *Krupsaw v. Welch*, 34 F.Supp. 396, 1940 U.S. Dist. LEXIS 2821 (D.D.C.1940).

In action for one-half the cost of constructing a party wall, which was constructed by plaintiff on dividing line between his property and that which defendants held as trustees, evidence failed to establish individual liability on the part of the trustees. *Krupsaw v. Welch*, 34 F.Supp. 396, 1940 U.S. Dist. LEXIS 2821 (D.D.C.1940).

In general.

The regulations issued by President Washington governing the sale of lots in the original federal city, and providing for the use of party walls by adjoining owners on the payment of a proportionate part of the cost, which were adopted as the building regulations of the district commissioners under the authority of Act June 14, 1878, 20 Stat. 131, which provided the regulations should have the force of law, and which have been adopted and followed by numerous lot owners outside the federal city, have become such a general custom as to raise an implied agreement that, where party walls were erected in the outlying district, the same obligation to contribute to the cost of the wall arose as in the case of a wall in the federal city, if the adjoining owner used the wall. *Walker v. Gish*, 43 S.Ct. 174, 1923 U.S. LEXIS 2484 (U.S. Dist. Col. 1923).

The building regulations of the District of Columbia in respect of party walls are mere rules for the enforcement of existing rights, established, so far as they relate to compensation to be paid by one using such a wall, by the order of President Washington, expressly authorized by the provisions of the original grant of the federal District. *Walker v. Gish*, 43 S.Ct. 174, 1923 U.S. LEXIS 2484 (U.S. Dist. Col. 1923).

The building regulations promulgated by President Washington by virtue of the authority contained in the original grant of the federal District providing for the erection of party walls, and that the first builder should be reimbursed one moiety of the charge of such party wall, or so much thereof as the next builder should use, is inoperative beyond the limits of the city of Washington as originally

laid off; and there is no statute or regulation in force legalizing the erection of such walls beyond such limits. *Walker v. Gish*, 43 S.Ct. 174, 1923 U.S. LEXIS 2484 (U.S. Dist. Col. 1923).

The erection of a party wall by one of the two adjoining owners does not amount to a taking of private property for private use, in the broad sense of the limitations of the federal Constitution, but amounts only to the establishment of a mutual easement or servitude and benefit. *Walker v. Gish*, 43 S.Ct. 174, 1923 U.S. LEXIS 2484 (U.S. Dist. Col. 1923).

Jurisdiction.

The right of an owner, who had constructed a party wall partly on the land of an adjoining owner, and thereby imposed a servitude on the land of the adjoining owner, to recover from the adjoining owner for the subsequent use of the party wall, depends on his title to the portion of the party wall built on adjoining owner's land, to establish which he must prove title in himself to his own land, so that the title is involved in an action to recover for the use of the party wall by the adjoining owner and the municipal court has no jurisdiction over that action. *Johnson v. Simmons*, 290 F. 331, 1923 U.S. App. LEXIS 1816 (1923).

The jurisdiction of the Supreme Court over an action to recover for the use of a party wall on the ground that title to land is involved, though the amount in controversy is below the jurisdictional limit, cannot be ousted by the defendant conceding plaintiff's title, since the question of title would always remain, although no contest was made thereon. *Johnson v. Simmons*, 290 F. 331, 1923 U.S. App. LEXIS 1816 (1923).

Review.

The constitutional validity of the building regulations of the District of Columbia, which by Act June 14, 1878, 20 Stat. 131, are given the effect of congressional legislation, was seasonably raised by request for charge at the trial in the Supreme Court of the District and by proper assignment of error in the proceedings for review, so that the question can be reviewed by the United States Supreme Court under Judicial Code, § 250, 36 Stat. 1159. *Walker v. Gish*, 43 S.Ct. 174, 1923 U.S. LEXIS 2484 (U.S. Dist. Col. 1923).

A suit to enjoin the maintenance of a party wall under regulation of commissioners of the District of Columbia under Act June 14, 1878, 20 Stat. 131, is one drawing in question validity of an authority exercised under the United States within Code D.C. § 233, governing the appellate jurisdiction of the Supreme Court. *Smoot v. Heyl*, 33 S.Ct. 336, 1913 U.S. LEXIS 2326 (U.S. Dist. Col. 1913).

A decision of the District Court of Appeals of the District of Columbia that an exterior wall of

a one-story bay window is not a party wall within building regulations promulgated under Act June 14, 1878, 20 Stat. 131, which defines such a wall as one built on the dividing line for common use, is not so clearly erroneous as to require reversal. *Smoot v. Heyl*, 33 S.Ct. 336, 1913 U.S. LEXIS 2326 (U.S. Dist. Col. 1913).

Rights and liabilities of adjoining owners.

One who had used a party wall erected by an adjoining owner under the building regulations of the District of Columbia cannot resist an action to compel him to pay his proportion of the cost of such wall under those regulations on the ground that the regulations were unconstitutional, as unfairly discriminating against an adjoining owner who could not or did not use the party wall. *Walker v. Gish*, 43 S.Ct. 174, 1923 U.S. LEXIS 2484 (U.S. Dist. Col. 1923).

Property owner, replacing division wall removed in excavating, held not required to remove new wall because of failure to obtain consent of adjoining owner. *Perry v. Reeve*, 12 F.2d 184, 1926 U.S. App. LEXIS 3193 (1926).

Under a regulation or statute requiring a lot owner, making use of a party wall partly on his lot, to pay the builder of the wall for such use, the claim of the builder for such compensation is a mere personal one, creating no interest in the property or the wall, adverse to the adjoining owner. *Fowler v. Koehler*, 43 App. D.C. 349, 1915 U.S. App. LEXIS 2622 (1915).

University did not trespass onto adjacent property when it built residence hall that cantilevered over party wall between properties, where the party wall was located entirely on the university's property and the residence hall did not extend beyond the property line. *Kreuzer v. George Washington Univ.*, 896 A.2d 238, 2006 D.C. App. LEXIS 155 (2006).

Property owner's extension of party wall, which was located entirely on university's adjacent property, was a seamless addition to the original wall, and thus, the extension did not confer to owner a possessory estate to university property that fell within party wall extension simply because the adjacent university property did not use the extension; to regard the extension as something other than a party wall, with the attendant right of support, artificially expanded ownership rights of property owner. *Kreuzer v. George Washington Univ.*, 896 A.2d 238, 2006 D.C. App. LEXIS 155 (2006).

Rights and liabilities of purchasers.

Erection of division wall by agreement establishes mutual easement, which follows conveyance of properties. *Perry v. Reeve*, 12 F.2d 184, 1926 U.S. App. LEXIS 3193 (1926).

The purchaser of a lot with a party wall on it, in which the adjoining owner has not exercised his right, succeeds to the rights of the builder,

and is entitled to compensation when such wall is used by the adjoining owner. *Walker v. Gish*, 273 F. 366, 1921 U.S. App. LEXIS 1471 (1921).

The grantee of the owner of a lot beyond the limits of the original city of Washington when he makes use of a party wall which has been built partly on his lot, will be required to pay the first builder for so much of the wall as he shall make use of in view of the customs to that effect. *Fowler v. Koehler*, 43 App.D.C. 349, 1915 U.S. App. LEXIS 2622 (1915).

Where the owner, after constructing a build-

ing, one of the walls of which is built partly on his lot and partly on the adjoining lot, conveys his property by deed, in which he reserves to himself the right to the free use of such wall, and thereafter a purchaser of the adjoining lot constructs a building thereon, using part of the wall as one of the walls of his building, the first builder is entitled to recover from the second builder compensation for the use of the wall. *Fowler v. Koehler*, 43 App.D.C. 349, 1915 U.S. App. LEXIS 2622 (1915).

§ 1-1326. Wall extending over lot line.

If the wall of any house already erected cover 7 inches or more in width of the adjoining lot, it shall be deemed a party wall, according to the regulations for building in the District, and the ground so occupied more than 7 inches in width shall be paid for as provided in § 1-1325.

(Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1587.)

Section references. — This section is referred to in § 1-1327.

Prior Codifications. — 1981 Ed., § 1-926. 1973 Ed., § 1-626.

§ 1-1327. Surveyor to certify and record location of party wall.

The Surveyor or a registered surveyor shall ascertain and certify, and the Surveyor may put on record, at the request and expense of any person interested therein, the fact of the occupation of land by a party wall, as mentioned in § 1-1326.

(Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1588; Apr. 20, 1999, D.C. Law 12-261, § 5005(e), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 1-927. 1973 Ed., § 1-627.

Legislative history of D.C. Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 1-1316.

Legislative history of Law 12-261. — For

§ 1-1328. Adjusting lines of buildings; certificate as evidence.

It shall be the duty of the Surveyor or registered land surveyor to attend and examine the foundation or walls of any house to be erected for the purpose of adjusting the line of the front of such building to the line of the street and correctly placing the party wall on the line of division between that and the adjoining lot; and his certificate of the fact shall be admitted as evidence and binding on the parties interested.

(Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1589; June 30, 1902, 32 Stat. 545, ch. 1329; Apr. 20, 1999, D.C. Law 12-261, § 5005(f), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 1-928. legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 1-1316.
1973 Ed., § 1-628.
Legislative history of Law 12-261. — For

§ 1-1329. Mayor to revise fees for Surveyor; notice of revision of fee schedule; inspection of fee schedule; employment of registered land surveyor.

(a)(1) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may establish and revise the fees and additional charges for services rendered by the Surveyor of the District of Columbia. The fees shall be established by the Mayor in such amounts as, in the Mayor's judgment, will be commensurate with the cost to the District of Columbia for providing the services rendered by the Office of the Surveyor. The schedule of fees established by the Mayor shall be available for inspection in the Office of the Surveyor.

(2) The proposed rules issued pursuant to paragraph (1) of this subsection shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 90-day review period, the proposed rules shall be deemed approved.

(a-1) Repealed.

(b) Any person may request in writing that the Surveyor perform any survey or prepare any plat authorized by this chapter. The Surveyor may complete and may record any survey within 60 days after a written request for survey is filed. Except for those surveying or other functions, duties or obligations specifically reserved to the Surveyor in this chapter, any person may employ, at his expense, a registered land surveyor to perform any survey or prepare any plat authorized by this chapter. Such registered land surveyor employed pursuant to this subsection shall perform the survey under the direction of and in accordance with procedures established by the Surveyor. This subsection shall not apply to any department or agency of the government of the District of Columbia.

(c) For the purposes of this section, a "registered land surveyor" shall mean any person or firm licensed under the provisions of subchapter I-B of Chapter 28 of Title 47 approved and permitted by the Office of the Surveyor to prepare and certify surveys and subdivision plats in the District of Columbia, including, but not limited to, registered civil engineers. The Surveyor is authorized to establish and enforce standards and operating procedures for the performance of surveys by registered land surveyors under subsection (b) of this section. The Surveyor is further authorized to establish and maintain a list of approved registered land surveyors who may be utilized by applicants for surveys pursuant to subsection (b) of this section.

(d) The Mayor is authorized to promulgate such rules and regulations as may be necessary to carry out the purposes of this section, including rules to

authorize the use of private land surveyors to perform surveys or prepare plats.

(e) Repealed.

(Mar. 3, 1901, 31 Stat. 1426, ch. 854, § 1593; Mar. 3, 1979, D.C. Law 2-149, § 2, 25 DCR 7035; Apr. 20, 1999, D.C. Law 12-261, § 5005(g), 46 DCR 3142; Mar. 3, 2010, D.C. Law 18-111, § 2031, 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 2022, 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, § 9038, 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 1-929. 1973 Ed., § 1-629.

Effect of amendments. — D.C. Law 18-111 added subsecs. (a-1) and (e).

D.C. Law 18-223 rewrote subsec. (a) and repealed subsec. (a-1).

D.C. Law 19-21 rewrote subsec. (e).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 202 of the Fiscal Year 2010 Balanced Budget Support Temporary Act of 2010 (D.C. Law 18-222, September 24, 2010, law notification 57 DCR 9859).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2031 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2031 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 202 of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) amendment of section, see § 202 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

For temporary (90 day) amendment of section, see § 2022 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 2-149. — Law 2-149 was introduced in Council and assigned Bill No. 2-372, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-338 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 1-1316.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 1-301.01.

Short title. — Short title: Section 2030 of D.C. Law 18-111 provided that subtitle D of title II of the act may be cited as the "Surveyor and Special Review Requests Enhanced Customer Services Amendment Act of 2009".

Short title: Section 2021 of D.C. Law 18-223 provided that subtitle C of title II of the act may be cited as the "Licensing, Permitting, and Corporate Filings Amendment Act of 2010".

CHAPTER 14. OFFICE OF THE CHIEF TECHNOLOGY OFFICER.

Subchapter I. General

Sec.

1-1401. Establishment of Office of the Chief Technology Officer.

1-1402. Purpose.

1-1403. Functions.

1-1404. Transfers.

1-1405. Organization.

Sec.

1-1406. Applicability.

Subchapter II. Technology Services Support

1-1431. Definitions.

1-1432. DC-NET Services Support Fund.

1-1433. Technology Infrastructure Services Support Fund.

Subchapter I. General.

§ 1-1401. Establishment of Office of the Chief Technology Officer.

(a) Pursuant to § 1-204.04(b), there is hereby established, in the Executive Branch of the government of the District of Columbia, an Office of the Chief Technology Officer ("Office") under the supervision of a Chief Technology Officer, who shall carry out the functions and authorities assigned to the Office. The Office of the Chief Technology Officer is established as of July 13, 1998.

(b) The Chief Technology Officer shall have full authority over the Office and all functions and personnel assigned thereto, including the power to redelegate to other employees and officials of the Office such powers and authority as in the judgment of the Chief Technology Officer is warranted in the interests of efficiency and sound administration.

(Mar. 26, 1999, D.C. Law 12-175, § 1812, 45 DCR 7193.)

Prior Codifications. — 1981 Ed., § 1-1195.1.

Emergency legislation. — For temporary addition of §§ 1-1195.1 to 1-1195.5 1981 Ed., see §§ 1412-1416 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and see §§ 1412-1416 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary (90-day) addition of Chapter 11B 1981 Ed., see §§ 1412 to 1416 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

Legislative history of Law 12-175. — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Editor's notes. — Establishment of the Office of the Chief Technology Officer: Section 1811 of D.C. Law 12-175 provided this chapter may be cited as the "Office of the Chief Technology Officer Establishment Act of 1998."

Section 2909(c)(1) of the E-Government Act of 2002, approved December 17, 2002 (P.L. 107-347; 116 Stat. 2899), states, in relevant part, the following:

"Sec. 3705. Application to Office of the Chief Technology Officer of the District of Columbia.

"(a) In General.—The Chief Technology Officer of the District of Columbia may arrange for the assignment of an employee of the Office of the Chief Technology Officer to a private sector organization, or an employee of a private sector organization to such Office, in the same manner as the head of an agency under this chapter.

"(b) Terms and Conditions.—An assignment made pursuant to subsection (a) shall be subject to the same terms and conditions as an assignment made by the head of an agency under this chapter, except that in applying such terms and conditions to an assignment made pursuant to subsection (a), any reference in this chapter to a provision of law or regulation of the United States shall be deemed to be a reference

to the applicable provision of law or regulation of the District of Columbia, including the applicable provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (sec. 1-601.01 et seq., D.C. Official Code) and section 601 of the District of Columbia Campaign Finance Reform and Conflict of Interest Act (sec. 1-1106.01, D.C. Official Code).

“(c) Definition.—For purposes of this section, the term ‘Office of the Chief Technology Officer’ means the office established in the executive branch of the government of the District of Columbia under the Office of the Chief Technology Officer Establishment Act of 1998 (sec. 1-1401 et seq., D.C. Official Code).”

§ 1-1402. Purpose.

The purpose of the Office is to centralize responsibility for the District government’s investments in information technology and telecommunications systems to help District departments and agencies provide services more efficiently and effectively. The Office will develop and enforce policy directives and standards regarding information technology and telecommunications systems throughout the District government. The Office will also serve as a source of expertise for District departments and agencies seeking to use information technology and telecommunications systems to improve services. In addition, the Office may work to ensure that reasonable, affordable access to high-speed Internet services is available to District residents and businesses.

(Mar. 26, 1999, D.C. Law 12-175, § 1813, 45 DCR 7193; Sept. 24, 2010, D.C. Law 18-223, § 1042(a), 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 1-1195.2.

Effect of amendments. — D.C. Law 18-223 added the last sentence.

Emergency legislation. — For temporary addition of §§ 1-1195.1 to 1-1195.5 1981 Ed., see note to § 1-1401.

For temporary (90-day) addition of Chapter 11B 1981 Ed., see notes following § 1-1401.

For temporary (90 day) amendment of section, see § 1042(a) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 1-1401.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Short title. — Short title: Section 1041 of D.C. Law 18-223 provided that subtitle E of title I of the act may be cited as the “Technology Services Amendment Act of 2010”.

Editor’s notes. — Establishment of Geographic Information System Steering Committee, see Mayor’s Order 2002-27, February 15, 2002 (49 DCR 1298).

§ 1-1403. Functions.

The functions assigned to the Office shall be to:

(1) Issue regulations governing the acquisition, use, and management of information technology and telecommunications systems and resources throughout the District government, including hardware, software, and contract services in the areas of data and word processing, telecommunications, printing and copying;

(2) Review and approve all agency proposals, purchase orders, and contracts for the acquisition of information technology and telecommunications systems, resources, and services, and recommend approval or disapproval to the Chief Procurement Officer;

(3) Review and approve the information technology and telecommunications budgets for District government department and agencies;

(4) Coordinate the development of information management plans, stan-

dards, systems, and procedures throughout the District government, including the development of an information technology strategic plan for the District;

(5) Assess new or emerging technologies and advise District department and agencies on the potential applications of these technologies to their programs and services;

(6) Implement information technology solutions and systems throughout the District government;

(7) Promote the compatibility of information technology and telecommunications systems throughout the District government;

(8) Serve as a resource and provide advice to District departments and agencies about how to use information technology and telecommunications systems to improve services, including assistance to departments and agencies in developing information technology strategic plans;

(9) Maintain and oversee all District data centers, including, but not limited to, the SHARE, Department of Human Services, Department of Employment Services, University of the District of Columbia, Metropolitan Police Department, Public Benefits Corporation, Saint Elizabeths, Department of Health, and District of Columbia Public Schools data centers; provided, that this paragraph shall not apply to the Department of Motor Vehicles;

(10)(A)(i) Review the use of landlines, wireless phone lines, and data for which the District pays for telecommunication services and decertify and disconnect such services whenever not in active use; and

(ii) Require District agencies to annually re-certify all inventory in the fixed cost management system of active landlines, wireless phone lines, and data circuits.

(B) The Office may:

(i) Disconnect landlines in favor of wireless devices and vice versa based on usage analysis and in consultation with agency directors; and

(ii) Review and reject any requests for telecommunication services that do not comply with the technology standards of the Office.

(C) The Office shall not impose any requirement, determination, or decision concerning, or otherwise interfere with, the telecommunications inventory of the Council unless the Council specifically consents;

(11) Developing and implementing solutions designed to ensure that residents and businesses in all areas of the District have reasonable, affordable access to high-speed Internet services; and

(12) In furtherance of paragraph (10) of this section, obtaining and expending federal grant funds for digital inclusion efforts and awarding sub-grants to nonprofit entities established in the District for the purpose of supporting digital inclusion efforts by such entities, including the following:

(A) Providing computer literacy training;

(B) Providing free or low-cost computers;

(C) Developing new online content;

(D) Conducting public outreach concerning the use, availability, and benefits of computers and the Internet; and

(E) Similar efforts to enhance the accessibility, usability, affordability,

and perceived value of computers and the Internet among under-served populations of the District.

(Mar. 26, 1999, D.C. Law 12-175, § 1814, 45 DCR 7193; Oct. 19, 2000, D.C. Law 13-172, § 2103(a), 47 DCR 6308; Nov. 13, 2003, D.C. Law 15-39, § 632, 50 DCR 5668; Mar. 2, 2007, D.C. Law 16-191, § 117, 53 DCR 6794; Mar. 25, 2009, D.C. Law 17-353, § 177, 56 DCR 1117; Mar. 3, 2010, D.C. Law 18-111, § 1031, 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 1042(b), 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, § 1012, 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 1-1195.3.

Effect of amendments. — D.C. Law 13-172 deleted “and” from the end of par. (7), substituted a semicolon for a period at the end of subsec. (8), and added par. (9).

D.C. Law 15-39, in par. (9), inserted “; provided, that this paragraph shall not apply to the Department of Motor Vehicles” before the period.

D.C. Law 16-191, in par. (8), validated a previously made technical correction.

D.C. Law 17-353 validated a previously made technical correction in par. (8).

D.C. Law 18-111 deleted “; and” from the end of par. (8); substituted “; and” for a period at the end of par. (9); and added par. (10).

D.C. Law 18-223, in par. (9), deleted “and” from the end; substituted “; and” for a period at the end of par. (10), and added par. (11).

D.C. Law 19-21, in par. (10)(C), deleted “and” from the end; in par. (11), substituted “; and” for a period; and added par. (12).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4 of the Chief Technology Officer Year 2000 Remediation Procurement Authority Temporary Amendment Act of 1999 (D.C. Law 13-17, July 17, 1999, law notification 46 DCR 6314).

Emergency legislation. — For temporary addition of §§ 1-1195.1 to 1-1195.5 1981 Ed., see note to § 1-1401.

For temporary (90-day) amendment of section, see § 4 of the Chief Technology Officer Year 2000 Remediation Procurement Authority Emergency Amendment Act of 1999 (D.C. Act 13-38, March 22, 1999, 46 DCR 3015).

For temporary (90-day) addition of Chapter 11B 1981 Ed., see notes following § 1-1401.

For temporary (90-day) amendment of section, see § 4 of the Chief Technology Officer Year 2000 Remediation Procurement Authority Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-106, July 9, 1999, 46 DCR 6028).

For temporary (90-day) amendment of section, see § 2103(a) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 2103(a) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 632 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 632 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) amendment of section, see § 1031 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 1031 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 1042(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 1-1401.

Legislative history of Law 13-172. — For Law 13-172, see notes following § 2-301.04.

Legislative history of Law 15-39. — Law 15-39, the “Fiscal Year 2004 Budget Support Act of 2003”, was introduced in Council and assigned Bill No. 15-218, which was referred to Committee on Whole. The Bill was adopted on first and second readings on May 6, 2003, and June 3, 2003, respectively. Signed by the Mayor on June 20, 2003, it was assigned Act No. 15-106 and transmitted to both Houses of Congress for its review. D.C. Law 15-39 became effective on November 13, 2003.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 1-325.44.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 1-129.05.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 1-301.01.

Short title. — Short title of subtitle D of title VI of Law 15-39: Section 631 of D.C. Law 15-39 provided that subtitle D of title VI of the act may be cited as the Department of Motor Vehicles Destiny Staffing Amendment Act of 2003.

Short title: Section 1030 of D.C. Law 18-111 provided that subtitle D of title I of the act may be cited as the “Telecommunication Accountability Amendment Act of 2009”.

Short title: Section 1011 of D.C. Law 19-21 provided that subtitle B of title I of the act may be cited as “Digital Inclusion Grant-making Amendment Act of 2011”.

§ 1-1404. Transfers.

All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Chief Information Officer in the Office of the City Administrator pursuant to § 2-327.01 [repealed], or to the Department of Administrative Services for the information technology and telecommunications purposes and functions set out in Reorganization Plan No. 5 of 1983, effective March 1, 1984, are hereby transferred to the Office of the Chief Technology Officer.

(Mar. 26, 1999, D.C. Law 12-175, § 1815, 45 DCR 7193.)

Prior Codifications. — 1981 Ed., § 1-1195.4.

Emergency legislation. — For temporary addition of §§ 1-1195.1 to 1-1195.5 1981 Ed., see note to § 1-1401.

For temporary (90-day) addition of Chapter 11B 1981 Ed., see notes following § 1-1401.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 1-1401.

§ 1-1405. Organization.

(a) There are hereby established 3 primary organizational functions in the Office as follows:

(1) The Office of the Chief Technology Officer, which will include the staff and organizational units needed to carry out the overall plans and directions for the District’s information technology, telecommunications policies, and data centers;

(2) Agency Support Services, which will provide direct assistance and support to the user agencies throughout the District government. Agency Support Services will also provide procurement and contract oversight and assistance for information technology and telecommunications, maintain standard technology-related contracts that all District departments and agencies may use, and manage projects that introduce new technologies and systems throughout the District government; and

(3) Technical Services, which will provide support for desktop computers, servers, phones, and network equipment, and identify cost savings, operational efficiencies, and ways to improve public services by introducing tested technologies such as electronic service delivery, document imaging, and Internet systems.

(b) The Chief Technology Officer, in the performance of his or her duties and functions, is authorized to restructure the organizational components of the Office as he or she deems necessary to improve the quality of services.

(Mar. 26, 1999, D.C. Law 12-175, § 1816, 45 DCR 7193; Oct. 19, 2000, D.C. Law 13-172, § 2103(b), 47 DCR 6308.)

Prior Codifications. — 1981 Ed., § 1-1195.5.

Effect of amendments. — D.C. Law 13-172, in par. (1) of subsec. (a), substituted “, telecommunications policies, and data centers” for “and telecommunications policies”.

Emergency legislation. — For temporary addition of §§ 1-1195.1 to 1-1195.5 1981 Ed., see note to § 1-1401.

For temporary (90-day) addition of Chapter 11B 1981 Ed., see notes following § 1-1401.

For temporary (90-day) amendment of section, see § 2103(b) of the Fiscal Year 2001

Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 2103(b) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 1-1401.

Legislative history of Law 13-172. — For Law 13-172, see notes following § 2-301.04.

§ 1-1406. Applicability.

Sections 1-1402 and 1-1403 shall not apply to the Council of the District of Columbia or the Office of the District of Columbia Auditor; provided, that the Council may enter into written agreements with the Office of the Chief Technology Officer to coordinate the operations of its electronic communications.

(Mar. 26, 1999, D.C. Law 12-175, § 1816a, as added Mar. 3, 2010, D.C. Law 18-111, § 1102, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 1102 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 1102

of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Subchapter II. Technology Services Support.

§ 1-1431. Definitions.

For the purposes of this subchapter, the term:

(1) “Citywide Messaging program” means a program conducted by the Office of the Chief Technology Officer to manage the citywide e-mail system for the District government.

(2) “Citywide Security program” means a program conducted by the Office of the Chief Technology Officer to implement and manage information technology security infrastructure for the District government.

(3) “Costs” includes obligations incurred before September 18, 2007.

(4) “DC-NET program” means a program conducted by the Office of the Chief Technology Officer to implement and manage a state-of-the-art, fiber-optic network owned by the District government.

(5) “IT ServUs program” means a program conducted by the Office of the Chief Technology Officer to furnish centralized procurement and management of hardware and software for desktop computer workstations and to provide desktop computer solutions and services to District government agencies.

(6) “Server Operations program” means a program conducted by the Office of the Chief Technology Officer to provide centralized management of server

computers that support functions of District government agencies.

(Sept. 18, 2007, D.C. Law 17-20, § 1002, 54 DCR 7052.)

Emergency legislation. — For temporary (90 day) addition, see § 1002 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — Law 17-20, the “Fiscal Year 2008 Budget Support Act of 2007”, was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May

15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Short title. — Short title: Section 1001 of D.C. Law 17-20 provided that subtitle A of title I of the act may be cited as the “Technology Services Support Act of 2007”.

§ 1-1432. DC-NET Services Support Fund.

(a) There is established as a nonlapsing fund the DC-NET Services Support Fund, which shall be used solely to defray operational costs of the DC-NET program. The DC-NET Services Support Fund shall be funded by payments for telecommunications services furnished by the DC-NET program of the Office of the Chief Technology Officer from independent District government agencies, agencies of the federal government, agencies of state or local governments, nonprofit entities providing health care or education services in the District of Columbia, entities outside the District government that may engage the DC-Net program to provide telecommunications services to the District of Columbia Public Schools, District of Columbia public charter schools, the District of Columbia Public Library, and any open-access public network established for the purpose of providing Internet access services to underserved residents or neighborhoods in the District. All funds collected from these sources shall be deposited into the DC-NET Services Support Fund.

(b) All funds deposited into the DC-NET Services Support Fund, and any interest earned thereon, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(Sept. 18, 2007, D.C. Law 17-20, § 1003, 54 DCR 7052; Sept. 24, 2010, D.C. Law 18-223, § 1043, 57 DCR 6242.)

Effect of amendments. — D.C. Law 18-223, in subsec. (a), substituted “independent District government agencies, agencies of the federal government, agencies of state or local governments, nonprofit entities providing health care or education services in the District of Columbia, entities outside the District government that may engage the DC-Net program to provide telecommunications services to the District of Columbia Public Schools, District of Columbia public charter schools, the District of Columbia Public Library, and any open-access public network established for the purpose of providing Internet access services to

underserved residents or neighborhoods in the District” for “independent District government agencies and entities outside the District government that may engage the DC-Net program to provide telecommunications services to the District of Columbia Public Schools”.

Emergency legislation. — For temporary (90 day) addition, see § 1003 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 1043 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 17-20. — For Law 17-20, see notes following § 1-1431.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

§ 1-1433. Technology Infrastructure Services Support Fund.

(a) There is established as a nonlapsing fund the Technology Infrastructure Services Support Fund, which shall be used solely to defray operational costs of the Citywide Messaging program, the Citywide Security program, the IT ServUs program, and the Server Operations program. The Technology Infrastructure Services Support Fund shall be funded by payments from independent District government agencies for services furnished by the Citywide Messaging program, the Citywide Security program, the IT ServUs program, and the Server Operations program. All funds collected from these sources shall be deposited into the Technology Infrastructure Services Support Fund.

(b) All funds deposited into the Technology Infrastructure Services Support Fund, and any interest earned thereon, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(Sept. 18, 2007, D.C. Law 17-20, § 1004, 54 DCR 7052.)

Emergency legislation. — For temporary (90 day) addition, see § 1004 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — For Law 17-20, see notes following § 1-1431.

CHAPTER 15. REORGANIZATION OF THE DISTRICT SINCE THE
ESTABLISHMENT OF HOME RULE.

Subchapter I. 1975

- Part A . Reorganization Plan No. 2 of 1975
- Part B . Reorganization Plan No. 3 of 1975

Subchapter II. 1978

- Part A . Reorganization Plan No. 1 of 1978

Subchapter III. 1979

- Part A . Reorganization Plan No. 2 of 1979

Subchapter IV. 1980

- Part A . Reorganization Plan No. 1 of 1980
- Part B . Reorganization Plan No. 3 of 1980

Subchapter V. 1982

- Part A . Reorganization Plan No. 1 of 1982
- Part B . Reorganization Plan No. 2 of 1982

Subchapter VI. 1983

- Part A . Reorganization Plan No. 1 of 1983
- Part B . Reorganization Plan No. 2 of 1983
- Part C . Reorganization Plan No. 3 of 1983
- Part D . Reorganization Plan No. 4 of 1983
- Part E . Reorganization Plan No. 5 of 1983

Subchapter VII. 1986

- Part A . Reorganization Plan No. 2 of 1986
- Part B . Reorganization Plan No. 3 of 1986

Subchapter VIII. 1987

- Part A . Reorganization Plan No. 1 of 1987
- Part B . Reorganization Plan No. 2 of 1987

Subchapter IX. 1988

- Part A . Reorganization Plan No. 3 of 1988
- Part B . Reorganization Plan No. 4 of 1988

Subchapter X. 1989

- Part A . Reorganization Plan No. 1 of 1989

REORGANIZATION OF THE DISTRICT

Subchapter XI. 1992

- Part A . Reorganization Plan No. 1 of 1992
- Part B . Reorganization Plan No. 2 of 1992
- Part C . Reorganization Plan No. 3 of 1992

Subchapter XII. 1993

- Part A . Reorganization Plan No. 2 of 1993
- Part B . Reorganization Plan No. 3 of 1993
- Part C . Reorganization Plan No. 4 of 1993

Subchapter XIII. 1995

- Part A . Reorganization Plan No. 1 of 1995
- Reorganization Plan No. 5 of 1996
- Part B . Reorganization Plan No. 2 of 1995

Subchapter XIV. 1996

- Part A . Reorganization Plan No. 4 of 1996
- Part B . Reorganization Plan No. 7 of 1996

Subchapter XV. 1998

- Part A . Reorganization Plan No. 1 of 1998
- Part B . Reorganization Plan No. 5 of 1998

Subchapter XVI. 2000

- Part A . Historical Preservation, Reorganization 2000

Subchapter XVII. 2002

- Part A . Reorganization Plan No. 1 of 2002

Subchapter XVIII. 2003

- Part A . Reorganization Plan No. 1 of 2003

Subchapter I. 1975.

Part A

REORGANIZATION PLAN NO. 2 OF 1975.

(21 DCR 3198; 22 DCR 961; Effective July 25, 1975).

Prepared by the Mayor and transmitted to the Council of the District of Columbia April 29, 1975, pursuant to the provisions of Section 422(12) of the District Charter.

GOVERNMENT ORGANIZATION

DEPARTMENT OF TRANSPORTATION

I. ESTABLISHMENT

There is established, under the direction and control of the Mayor, a Department of Transportation headed by a Director. The Director shall have full authority over such Department and all functions and personnel assigned thereto, including the power to redelegate to other employees and officials of the Department such powers as in the Director's judgment are warranted in the interest of efficiency and good administration. All authority vested in the Director shall be exercised in accordance with applicable laws, rules and regulations.

II. PURPOSE

The Department of Transportation is charged with assisting the Mayor to assure the provision of a safe and adequate transportation system for residents and visitors to the District of Columbia.

III. FUNCTIONS

The Director of the Department of Transportation shall:

A. Plan, program, construct, operate and maintain public transportation facilities and systems to meet transportation needs within the District of Columbia.

B. Identify financial resources to be applied to transportation programs, and develop a plan for allocation of those resources among those programs.

C. Develop policies relating to transportation facilities not owned by the District of Columbia, e.g., mass transit, taxicab, aviation, transportation terminals; and coordinate those policies with agencies, public and private, which operate and regulate those facilities.

D. Analyze transportation programs for their impact on the social and physical environment, including land use and development; develop ways and means to mitigate undesirable impact and implement environmental programs.

E. Promulgate safety standards relating to the licensing and inspection of vehicles, including aircraft and watercraft, and licensing, testing and training of vehicle operators, to the extent those matters fall within the jurisdiction of the District of Columbia; and the operation of programs for the administration of those standards.

F. Develop highway safety standards, including those relating to bicyclists and pedestrians, and implement safety standards in the District of Columbia streets and highways program.

G. Cooperatively with the Municipal Planning Office, coordinate District of Columbia transportation plans and programs and maintain liaison with metropolitan area governments, the Council of Government, the Washington Metropolitan Area Transit Authority, Federal agencies, and appropriate public and private groups involved in transportation.

REORGANIZATION OF THE DISTRICT

H. Cooperatively with the Municipal Planning Office, coordinate transportation plans and programs with the programs of other District of Columbia departments and agencies to assure consistency with all appropriate goals and objectives of the government.

I. Develop parking policies and the operation of parking programs assigned to the department.

IV. TRANSFER OF FUNCTIONS

The following are hereby transferred to the Department of Transportation:

A. The functions related to the Department of Motor Vehicles as set forth in C.O. 73-238, Replacement of Organizational Order No. 105, dated October 12, 1973.

B. The functions related to the Department of Motor Vehicles as set forth in C.O. 73-144, Delegation of Authority Regarding Regulation Providing Special Parking Privileges for Handicapped Drivers, dated June 15, 1973.

C. The functions related to the Department of Motor Vehicles as set forth in C.O. 74-77, Delegation of Authority Regarding Development of a Plan to Implement the Provisions of Highway Safety Standard 316, Debris Hazard Control and Cleanup, dated May 10, 1974.

D. The functions related to the Department of Motor Vehicles as set forth in C.O. 74-172, Delegation of Authority Regarding the Regulation of Slow-Moving Vehicles, dated August 1, 1974.

E. The functions related to the Department of Highways and Traffic as set forth in Order No. 59-33, Department of Highways and Traffic Organization Order No. 122 (Reorganization), dated January 8, 1959, as Amended.

F. The functions related to the Department of Highways and Traffic as set forth in Order of the Commissioner 68-236, Delegation of Authority to Establish Flat Rate Charges for Street Repairs, dated March 20, 1968.

G. The functions related to the Department of Highways and Traffic as set forth in Order of the Commissioner 68-554, Delegation of Authority to Establish and Administer Traffic Rules and Regulations, dated August 16, 1968.

H. The functions related to the Department of Highways and Traffic as set forth in Order of the Commissioner 69-615, Organization Order No. 9, as Amended, Contracting Officer, dated November 4, 1969.

I. The functions related to the Department of Highways and Traffic as set forth in C.O. 70-151, Delegation of Authority for Final Approval of License Bonds, dated April 22, 1970.

J. The functions related to the Department of Highways and Traffic as set forth in C.O. 71-75, Annual Hauling Permit Fee for a Self-Unloading, Single Unit Motor Vehicle by Weight Class with three or more Axles, dated March 18, 1971.

K. The functions related to the Department of Highways and Traffic as set forth in C.O. 71-354, Delegation of Authority to Administer City Council Regulation 71-25 Prohibiting Left Turns into Parking Lots and Garages, dated September 10, 1971.

L. The functions related to the Department of Highways and Traffic as set forth in C.O. 72-11, General Purpose Transportation, dated January 13, 1972.

M. The functions related to the Department of Highways and Traffic as set forth in C.O. 72-107, Implementation of City Council Regulation 71-26 Governing Bicycles, dated May 4, 1972.

N. The functions related to the Department of Highways and Traffic as set forth in C.O. 72-182, Delegation of Authority to Enter into Interstate Agreement with the State of Maryland and the Commonwealth of Virginia, dated July 17, 1972.

O. The functions related to the Department of Highways and Traffic as set forth in C.O. 73-76, Delegation of Authority to Execute Downtown Bus Service Capital Grant Project No. DC-VTG-2, dated March 28, 1973.

P. The functions related to the Department of Highways and Traffic as set forth in C.O. 72-79, Delegation of Authority to Execute Downtown Bus Service Demonstration Grant Project No. DC-06-0069, as Amended and dated March 28, 1973.

Q. The functions related to the Department of Highways and Traffic as set forth in C.O. 73-168, Delegation of Authority Under the District of Columbia Public Space Utilization Act, dated July 13, 1973.

R. The functions related to the Department of Highways and Traffic as set forth in C.O. 74-207, Delegation of Authority to Apply for and Execute an Urban Mass Transportation Capital Improvement Grant for the National Visitors Center, dated September 30, 1974.

S. The functions related to the Department of Highways and Traffic as set forth in C.O. 74-54, Designation of Department of Highways and Traffic as the District Agency Responsible for Administration of Programs Under Sec. 230 Safe Roads Program — Highway Safety Act of 1973, dated March 29, 1974.

T. The functions related to the Department of Motor Vehicles as set forth in Organization Order No. 21, Order of the Commissioner 69-235, Traffic Coordinating Committee, dated May 26, 1969.

U. The functions related to the Department of Highways and Traffic as set forth in Organization Order No. 23, Order of the Commissioner 69-502, D.C. Public Space Committee, as Amended and dated September 3, 1969.

V. The functions related to the Director of the Department of Motor Vehicles in C.O. 69-234, Highway Safety Program Coordinator, dated May 26, 1969.

W. Any other functions not specifically mentioned above which are now delegated to, or vested in, the Director of the Department of Highways and Traffic and the Director of the Department of Motor Vehicles and the Transportation Systems Coordinator.

V. DELEGATIONS AND REDELEGATIONS OF AUTHORITY

A. The Director of the Department of Transportation is the successor to all authority delegated to the Director of the Department of Motor Vehicles, the Director of the Department of Highways and Traffic, and the Transportation Systems Coordinator, and is authorized to act, either personally or through a designated representative, as a member of whatever committees, commissions,

REORGANIZATION OF THE DISTRICT

boards, or other bodies which presently include as a member the Director of the Department of Motor Vehicles, the Director of the Department of Highways and Traffic, and the Transportation Systems Coordinator.

B. The Director of the Department of Transportation is designated as the Governor's Highway Safety Representative and the Department of Transportation is designated State agency for administration of the Highway Safety Program in the District of Columbia.

VI. OTHER TRANSFERS

All positions, personnel, property, records and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the above functions, other than those resources and functions to be transferred to the Public Service Commission, are hereby transferred to the Director of the Department of Transportation.

VII. ORGANIZATION

The Director of the Department of Transportation, in the performance of his duties and functions, is authorized to establish such organizational components thereunder with such specified functions, as he deems appropriate.

VIII. RESCISSION

A. All Orders and parts of Orders in conflict with any of the provisions of this plan are, to the extent of such conflict, hereby repealed except that any municipal regulation adopted or promulgated by virtue of the authority granted by such orders shall remain in force until otherwise amended or repealed.

B. The positions of Director, Department of Motor Vehicles, Director, Department of Highways and Traffic and the Transportation Systems Coordinator are hereby abolished.

IX. EFFECTIVE DATE

The provisions of this plan shall become effective pursuant to the requirements of Section 422(12) of Public Law 93-198.

MAYOR'S STATEMENT

PRESENT PROBLEMS

District of Columbia activities and functions relating to transportation are presently fragmented among several District agencies and departments.

The Department of Highways and Traffic is responsible for planning, constructing and maintaining the District's highway system as well as for planning and controlling traffic flow. In addition, this Department maintains the District's public and metered parking facilities.

The Department of Motor Vehicles is responsible for testing and licensing operators of all powered wheeled vehicles, as well as for inspecting and registering these vehicles.

The Transportation Systems Coordinator, lodged in the Executive office of the Mayor, provides liaison to the Metro operations, evaluates transportation proposals, and advises the Mayor on transportation policy.

Each of the above entities provides specific services to the District based on valid and appropriate objectives. Taken collectively, however, these goals are not sufficiently broad to encompass the entire spectrum of District transportation needs. No single authority now exists which can perform an overview of city transportation needs and costs, balancing one mode against another or relating those needs and costs to non-transportation factors such as environmental impact and the broad economic situation.

PLAN TO ESTABLISH A DISTRICT OF COLUMBIA
DEPARTMENT OF TRANSPORTATION

In order to deal more effectively with the broader issues relating to the overall transportation needs of District citizens and visitors, it is planned to combine into one organizational entity all related activities and functions now dispersed among the several offices cited above.

The reorganization presented in Reorganization Plan 2, with associated charts and tables, has been prepared with three objectives in mind:

Objective One: Capability for Broad Over-View: A Department of Transportation will be the key mechanism for addressing issues, needs and programs that extend to all transportation modes. The new department will identify rail service needs; perform analyses of the adequacy of the bus system and develop ways to improve it; develop plans and programs to integrate various methods of transportation to expedite passenger movement; promote the development of aviation facilities and their safe use; determine the need for new and perhaps larger transportation terminal facilities; develop the means for a more efficient distribution of goods; and develop a system of bikeways and pedestrianways. In summary, it will broaden the transportation objectives of the city.

Objective Two: More Rational Allocation of Resources: The new realignment of facilities and services should reflect a more balanced approach to the transportation system. At the same time, the realignment should permit the department to obtain a better assessment of the resources needed to operate a total system.

Objective Three: Active Coordination with Independent Transportation Modes and with other Jurisdictions: While the city does not operate the METRO system or taxi companies, the city does have a responsibility to require that these transportation services be adequate, safe and economical. A Department of Transportation will provide the focal point for the city to interact with the Washington Metropolitan Area Transit Authority (WMATA), the Civil Aeronautics Board (CAB), the National Transportation Safety Board

(NTSB), the taxi industry, and other owners and regulators of transportation services.

STRUCTURE AND FUNCTIONS OF THE NEW DEPARTMENT

The Functional Chart of the planned Department carries out these objectives in structural form. Eight subunits are planned; three at the staff level, four at the operating level, and an Office of the Director. Notes on each of the eight units follow:

Office of the Director: In addition to a Director and Deputy Director, a staff for community relations is being established. The great importance of two-way communication with the community (both residents and visitors to the Nation's Capital) has led to the decision to give this function direct access to the Head of the agency by placing it in his immediate Office.

Office of Administration: The Administrative functions of the two existing departments are consolidated in this Unit. In addition to the present functions, financial resources management and regulations/legislation have been added here. The goal of financial resources management is to inventory and control all department resources within the context of one overall plan and budget. In order to permit analysis of departmental regulations, Federal requirements, and staff-level review of departmental hearing processes, a unit of regulations and legislation is also proposed.

Office of Transportation Policy and Plans: Overall program priorities will be developed here for recommendation to the Director and, through the Director, to the Mayor and Council. The economic impact of transportation decisions has long been neglected, but will find a home in this Office. Systems planning for all modes of transportation will be established to reflect general policy objectives. Traditional project oriented planning such as is now performed in the Highways and Traffic Department will take its cue and direction from the systems planning staff. Finally, establishment of a social program analytical capability will provide a planning link to community transportation needs.

Office of Safety and Environment: The existing highway safety coordination and safety education functions currently in the DMV form the nucleus for this new Office. This organization will allow for a new emphasis on safety standards for additional transport modes and for expansion of the environmental programs, including social impact and interagency cooperation.

The four operating bureaus, now identified as the Bureaus of Design, Engineering and Research, Construction and Maintenance, Traffic Engineering and Operations, and Motor Vehicle Services, are based on the present operating responsibilities of the Highways and Traffic and Motor Vehicle Departments. A side benefit to be gained, however, is that better resource utilization can be made possible through implementation of intermodal transportation projects at the operating level.

GOVERNMENT ORGANIZATION

EXPECTED BENEFITS OF THE CREATION OF THE DEPARTMENT OF TRANSPORTATION

Short-range:

1. Provides a central focal point within the District to deal with issues affecting overall municipal, area, and regional transportation planning.
2. Provides unified direction over all related activities in setting and achieving District-wide transportation goals, through closer coordination of the various facets of operations and programs.
3. Permits the expansion of technical and professional planning capability at the operating level without added expense to the District.
4. Permits greater flexibility for applying available resources appropriately to meet program and project priority needs.
5. Creates a more effective use of available professional, technical, and administrative staff skills through the expanded planning and resource flexibility capability.

Long-range:

1. Permits acquisition of additional and more suitable skills needed, through the normal process of employee turnover, for dealing with present day long-range transportation issues.
2. Permits anticipated administrative efficiencies and economies, particularly in the areas of personnel, budget, office services, procurement, and administrative management, through the consolidation of existing administrative staffs and elimination of hierarchical structures now necessary for each of the existing independent agencies.

Part B

REORGANIZATION PLAN NO. 3 OF 1975.

(21 DCR 2793; Effective July 3, 1975).

Prepared by the Mayor and transmitted to the Council of the District of Columbia on April 8, 1975, pursuant to the provisions of Section 422(12) of the District Charter.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

1. *Establishment.* — There is established, in the Executive Branch of the Government of the District of Columbia, the Department of Housing and Community Development headed by a Director who shall perform the functions herein transferred, delegated, or otherwise assigned to him, and who shall have the authority to redelegate such functions as he deems necessary.

2. *Purpose.* — The Department of Housing and Community Development is established to formulate, develop and recommend housing and community development policy, plans and programs, and to accomplish the promotion,

coordination and execution of policy, plans and programs, and the administration of laws, pertaining to housing and community development.

3. *Functions.* — The Director of the Department of Housing and Community Development shall:

(a) Provide the Mayor information and advice on matters pertaining to public and private housing and community development plans, programs and activities in the District of Columbia.

(b) Identify the District's housing and community development needs, formulate and recommend housing and community development policy, and accomplish the planning, promotion, coordination and execution of plans, projects and activities to meet the needs.

(c) Develop annual and longer-term housing and community development priorities, goals and objectives for the District.

(d) Prepare in collaboration with the Municipal Planning Office that portion of the Comprehensive Plan that pertains to housing and community development, and recommend changes in that plan when essential to the accomplishment of housing and community development goals and objectives.

(e) Prepare for submission to the Office of Budget and Management Systems that portion of the Capital Improvement Plan and the Multi-Year Program and Financial Plan, developed by the Department, that pertains to housing and community development; and recommend changes in that plan when essential to the accomplishment of housing and community development goals and objectives.

(f) Prepare an annual housing and community development work program and budget.

(g) Ensure that housing and community development plans and plan execution are coordinated with appropriate Federal and local agencies and departments.

(h) Develop with appropriate Federal and local agencies and departments, and with private organizations, plans and programs to create and sustain private developer interest and activity in the District of Columbia.

(i) Develop policies, standards and procedures for conducting housing and community development activities, such as inspection, relocation, land acquisition and disposition, citizen participation, minority contracting, data collection and management.

(j) Evaluate the effectiveness and efficiency with which housing and community development programs, projects and activities meet specified goals and objectives.

(k) Establish and maintain a City-wide data collection and data management system pertaining to housing and community development.

(l) Conduct research, field surveys and neighborhood planning and management studies relating to land use and housing conditions, and develop and test new program concepts as demonstration or special projects.

(m) Administer and enforce to the extent authorized by this Plan the statutes, codes and regulations governing housing, and the construction, erection, maintenance, repair, alteration, inspection, zoning, occupancy, use

and removal of buildings and their appurtenances and electrical and mechanical equipment.

(n) Promote the preservation and improvement of residential neighborhoods, the development of underdeveloped or inappropriately developed land, and the provision of supportive community services and economic opportunities in or near residential areas.

(o) Manage the affairs of the National Capital Housing Authority and the Model Cities Program.

(p) Provide staff support, administrative, fiscal, and housekeeping services for the Redevelopment Land Agency, National Capital Housing Authority, Board for the Condemnation of Insanitary Buildings, Condemnation Review Board, Relocation Advisory Committee (CO 73-151), Urban Renewal Operations Committee (CO 55-998), Building Code Advisory Committee (CO 72-173), and the Mayor's Advisory Committee on Fort Lincoln (CO 72-223).

(q) Review applications filed with the Board of Zoning Adjustment pursuant to Section 3105.42 of the District of Columbia Zoning Regulations and make comments and recommendations thereon to the Board.

(r) Manage the affairs of the Redevelopment Land Agency to the extent authorized by this Plan.

(s) Serve as Model Cities Administrator, State Historic Preservation Officer for the District of Columbia, Administrator of Section 109.10, D.C. Building Code, providing for delay in alteration and demolition of architecturally or historically significant properties, the Mayor's second alternate on the NCPC, the Mayor's first alternate on the NCPC's Housing and Urban Renewal Committee, member of the National Capital Planning Commission's (NCPC) Coordinating Committee, Chairman of the Relocation Advisory Committee, the Urban Renewal Operations Committee and the Building Code Advisory Committee, and Coordinator of the Fort Lincoln New Town Urban Renewal Project (CO 72-223).

(t) Present, at the direction of the Mayor, plans, budgets and proposed programs of the District pertaining to housing and community development to the Council of the District of Columbia, Congressional Committees, Federal agencies, the Metropolitan Washington Council of Governments, and other entities.

4. *Transfer of functions and delegated authorities respecting the District of Columbia Redevelopment Land Agency.* — The powers, duties and functions of the District of Columbia Redevelopment Land Agency, as set forth in D.C. Code 5-701 through 5-737, are transferred to the Director of the Department of Housing and Community Development, except as herein provided.

The Board of Directors of the Agency established pursuant to D.C. Code 5-703 shall continue to have full powers and duties with respect to the selection of any lessee or purchaser of real property acquired or to be acquired by the Agency. The Board shall also continue to have full powers and duties with respect to the adoption of resolutions and the execution of financial documents on behalf of the Agency in connection with the issuance or redemption of any bonds or notes issued or to be issued on behalf of the Agency. All proposed issuances shall be approved by the Mayor, or his designee.

The functions of adopting, prescribing, amending and repealing bylaws, rules and regulations for the exercise of the powers of the Board or governing the manner in which the Agency's business may be conducted, which have been transferred under Reorganization Plan No. 4 of 1968, are transferred to the Director of the Department of Housing and Community Development.

During the absence or disability of the Director, or in the event of a vacancy in the Office of the Director, such Acting Director as may be designated by the Mayor or such subordinate officer of the Department as may be designated by the Director, shall exercise the powers, duties and functions of the District of Columbia Redevelopment Land Agency that are transferred to the Director by this plan.

5. *Transfer of functions and delegated authorities respecting the National Capital Housing Authority.* — The powers, duties and functions of the National Capital Housing Authority, as set forth in the District of Columbia Alley Dwelling Act, as amended (D.C. Code 5-103 through 5-117), are transferred to the Director of the Department of Housing and Community Development, who shall serve as the Authority. In carrying out his functions as such Authority, the Director shall be known as the "National Capital Housing Authority." Such Authority shall be deemed a continuation of the Authority designated under Presidential Executive Order 6868 of October 9, 1934, as amended. During the absence or disability of the Director, or in the event of a vacancy in the Office of the Director, such Acting Director as may be designated by the Mayor or such subordinate officer of the Department as may be designated by the Director, shall act as the Authority.

6. *Transfer of functions and delegated authorities relating to the Office of Housing and Community Development.* — The powers, duties and functions of the Director of the Office of Housing and Community Development, as set forth in Commissioner's Orders No. 74-143 of June 29, 1974, No. 74-182 of August 21, 1974, No. 74-189 of September 6, 1974, No. 74-201 of September 25, 1974, and No. 74-233 of November 12, 1974, are transferred to the Director of the Department of Housing and Community Development. The Office of Housing and Community Development is abolished.

7. *Transfer of functions and delegated authorities relating to the Department of Economic Development.* — The powers, duties and functions of the Director of the Department of Economic Development, as set forth in Commissioner's Order No. 69-96 of March 7, 1969, as amended, relating to the administration and enforcement of the building and housing codes and the zoning laws and regulations are transferred to the Director of the Department of Housing and Community Development, except as herein provided. The functions relating to the issuance of licenses, permits and certificates in connection with the administration of such codes, laws and regulations shall remain vested in the Director of the Department of Economic Development.

In addition, the powers, duties, and functions of the Director of the Department of Economic Development relating to the provision of administrative staff for the Board for the Condemnation of Insanitary Buildings and the Condemnation Review Board, the administration and enforcement of laws and

regulations governing the abatement of nuisances under D.C. Code Sections 5-313 through 5-315 (relating to unlawful conditions); Sections 5-501 through 5-508 (relating to unsafe structures); and Section 6-902 (relating to removal of weeds on residential properties in accordance with Commissioner's Order No. 73-80) are transferred to the Director of the Department of Housing and Community Development. The powers, duties, and functions of the Director of the Department of Economic Development, as set forth in Commissioner's Order No. 70-301 of August 11, 1970; No. 72-174 of July 7, 1972; No. 73-73 of March 28, 1973; No. 73-168 of July 13, 1973; and No. 73-286 of December 14, 1973, are transferred to the Director of the Department of Housing and Community Development.

8. *Services to be provided by other agencies.* — The Director of the Department of Economic Development shall provide automated data processing services to the Department of Housing and Community Development for the conduct of its building and housing code enforcement activities. The Corporation Counsel [now Attorney General for the District of Columbia] shall perform the functions of general counsel for the Redevelopment Land Agency and the National Capital Housing Authority, which functions are transferred to the Corporation Counsel.

9. *Organization.* — The Director of the Department of Housing and Community Development, in the performance of the functions assigned to him, is authorized to establish such organizational components with such specified functions as he deems appropriate.

10. *Repeal of previous Orders.* — (a) Commissioner's Order No. 68-376 of May 22, 1968, is hereby repealed and those other Orders; or parts of Orders, in conflict with the provisions of this Plan, are to the extent of such conflict, hereby repealed.

(b) Organization Order No. 102, establishing the Board for the Condemnation of Insanitary Buildings (Commissioner's Order No. 54-2034), as amended, is further amended (i) by striking paragraph B in Part I and inserting in lieu thereof the following new paragraph B:

"B. The Board for the Condemnation of Insanitary Buildings shall consist of six members, each of whom shall serve at the pleasure of the Mayor; one representative of the Department of Housing and Community Development, who shall serve as Chairman; a representative of the Department of Economic Development; a representative of the Department of General Services; and three representatives of the Department of Environmental Services."; and,

(ii) by striking the term "Department of Licenses and Inspections" wherever it appears and inserting in lieu thereof the term "Department of Housing and Community Development".

(c) Organization Order No. 9, appointing Contracting Officers (Commissioner's Order No. 68-399), as amended, is further amended by striking clause (4) in paragraph A in Part I and inserting in lieu thereof "(4) Director, Department of Housing and Community Development;".

11. *Transfer of funds and other resources.* — All positions, personnel,

property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the above functions, other than the functions transferred to the Corporation Counsel, are transferred to the Director of the Department of Housing and Community Development, except that real property titled in the name of the District of Columbia Redevelopment Land Agency shall remain so vested. All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be available relating to the functions of the General Counsel and legal staffs of the Redevelopment Land Agency and the National Capital Housing Authority are transferred to the Corporation Counsel, who is authorized to establish such organizational components within that Office with such specified functions as may be deemed appropriate. Pursuant to the provisions of Public Law 93-198, section 713, all positions and personnel transferred herein which are in the competitive service shall retain such status and continue to be subject to all rules and regulations governing the competitive service until such time as the D.C. Government merit system is established in accordance with section 422 of Public Law 93-198.

12. *Effective Date.* — The provisions of this Plan shall become effective pursuant to the requirements of Section 422(12) of Public Law 93-198.

MAYOR'S STATEMENT

PRESENT PROBLEM

The need for more effective coordination of the District's housing and community development functions, as well as the associated reduction in administrative costs, has long been recognized. These problems were identified by the Commission on the Organization of the Government of the District Government (the Nelsen Commission) as well as by the Special Citizens Advisory Commission on Urban Renewal.

The Redevelopment Land Agency (RLA). — is responsible for executing Urban Renewal Plans that have been adopted by the National Capital Planning Commission and approval by the District of Columbia Council after public hearings in accordance with the D.C. Redevelopment Act, as amended.

The Office of Housing and Community Development is charged with:
 identifying the current and future housing and community development needs of the District of Columbia;
 developing a strategy for best meeting those needs; and
 ensuring the planning and coordination of programs, projects and other activities necessary to carry out that strategy.

The National Capital Housing Authority. — is responsible for the management of the more than 11,800 dwelling units which comprise the District of Columbia's public housing stock and, in addition, is responsible for the development and identification of new housing resources.

The D.C. Model Cities Program. — carries out a combined program of housing and economic development and related social support services in a

selected area (Service Area Six) of the District, as authorized and funded by the Demonstration Cities and Metropolitan Development Act of 1966.

The Housing, Zoning and Building Code Enforcement Bureau of the Department of Economic Development. — is responsible for providing community protection through an extensive program of examining buildings — structures, equipment, and plans for compliance with applicable D.C. codes.

PLAN TO ESTABLISH A DISTRICT OF COLUMBIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

This plan consolidates the activities of a number of offices and agencies: the Office of Housing and Community Development, the D.C. Redevelopment Land Agency, the National Capital Housing Authority, the Model Cities Commission, and the Housing, Building, and Zoning Divisions of the Department of Economic Development. These functions are placed in a single Department under a Director who, in addition, is designated as the National Capital Housing Authority and who is also delegated authority to prescribe the by-laws, rules, and regulations which govern the exercise of the powers of the Redevelopment Land Agency. Staff support services for the Board for the Condemnation of Insanitary Buildings, the Condemnation Review Board, the Relocation Advisory Committee, the Urban Renewal Operations Committee, the Building Code Advisory Committee, and the Mayor's Advisory Committee on Fort Lincoln are also to be provided by the Department.

The need for more effective coordination and less administrative complexity is expected to be achieved by the unification of the above functions.

A) Objective One: A consolidated housing and community development effort: The Department of Housing and Community Development will provide the central focus for directing programs that encompass all housing and community development within the District.

B) Objective Two: A more efficient utilization of Resources: By consolidating presently fragmented functions, economies could be achieved by reducing overlap and duplication of effort, newly-formed functions can be funded by a redirection of present resources.

C) Anticipated Benefits to be accrued by Reorganization Plan No. 3: —
Near-term:

1. A central entity within the District to address issues affecting overall city-wide community development.
2. Closer coordination and planning of priorities.
3. Expansion of technical and professional staff within existing resources.
4. Greater flexibility for applying available resources to program needs.
5. A more efficient utilization of available professional, technical and administrative staff skills.

Long-term:

1. Program expansion through redirection of existing resources and through normal employee turnover.

REORGANIZATION OF THE DISTRICT

2. Cost savings by consolidating administrative functions such as personnel, finance, procurement and computer services.

ELEMENTS OF REORGANIZATION PACKAGE

The supplements of this Reorganization Plan No. 3 of 1975 are attached as follows:

A. *Organization Chart*: This chart outlines the structure of the new Department.

B. *Functional Statement*: A list, keyed to the chart, of the functions of the principal units.

C. *Schedule of Existing Positions*: The first purpose of this printout is to indicate the tentative arrangement of positions along functional lines within the Department. This is not a proposed realignment. The second purpose is to list every position, filled or not, the grade, salary, job title, and the source of funding.

D. *Reorganization Process Timetable*: The timetable for full implementation of the desired reorganization.

CONCLUSION

It is my belief that this Reorganization Plan will substantially improve the capability of the District Government to plan, coordinate, and carry out its housing and community development program.

Subchapter II. 1978.

Part A

REORGANIZATION PLAN NO. 1 OF 1978.

(Effective June 27, 1978).

Prepared by the Mayor and transmitted to the Council of the District of Columbia on March 20, 1978, pursuant to the provisions of Section 422 (12) of the District Charter.

D.C. DEPARTMENT OF LABOR

I. ESTABLISHMENT

There is established in the Executive Branch of the Government of the District of Columbia, the Department of Labor headed by a Director who shall perform the functions herein transferred, delegated, or otherwise assigned to him and who shall have the authority to redelegate such functions as he deems necessary.

II. PURPOSE

The Department of Labor is established to provide opportunities for citizens and other eligible individuals to prepare for, find, and maintain employment; to provide training and supportive services to the unemployed, under employed and disadvantaged; to provide income maintenance to mitigate the effects of unemployment; and to promote the working conditions of wage earners by protecting their health, safety, wages, rights, and benefits.

III. FUNCTIONS

The Director shall:

(a) Provide the Mayor information and advice on matters pertaining to labor and manpower in the District of Columbia.

(b) Identify the District's labor and manpower needs, formulate and recommend labor and manpower policies, establish priorities, and accomplish the planning, promotion, coordination and execution of plans, projects and activities to meet the needs.

(c) Improve the capability of the workforce to participate in the labor market by providing employment counselling, training, referral, placement services, including development and administration of apprenticeship and youth employment and training programs.

(d) Develop a manpower planning system which shall include development of an annual comprehensive plan for the administration and operation of a coordinated program for employment and training opportunities.

(e) Protect the income of wage earners by developing, establishing and enforcing minimum wage and overtime compensation standards and requiring the payment of earned wages to workers.

(f) Mitigate the effects of unemployment by providing income maintenance for eligible recipients.

(g) Protect the health and safety of wage earners of the District of Columbia at their places of work by enforcing occupational safety and health regulations and offering safety and health consultation services.

(h) Develop and analyze policies relating to labor and manpower programs in the District of Columbia and coordinate such policies with appropriate public and private agencies, including the Federal Government.

(i) Hear appeals brought by claimants for unemployment compensation.

(j) Provide staff support and administrative, fiscal, and housekeeping services for the Manpower Services Planning Advisory Committee, Apprenticeship Council, Wage-Hour Board and Occupational Safety and Health Board and Employment Security Board hereinafter established.

(k) Administer other labor-related programs as the Mayor deems appropriate to carry out the purposes of the Department.

REORGANIZATION OF THE DISTRICT

IV. TRANSFER OF FUNCTIONS

The following powers, duties and functions are hereby transferred to the Director:

(a) Those of the D.C. Department of Manpower, set forth in Reorganization Order No. 46, Mayor's Order No. 76-234, November 10, 1976, as amended, and in D.C. Law 1-93, Section 4.(d), D.C. Youth Services Act of 1977, approved March 25, 1977.

(b) Those of the Minimum Wage and Industrial Safety Board set forth in Reorganization Order No. 36, June 16, 1953, as amended, except as hereinafter provided, including the authority to administer and enforce:

(1) The minimum wage and overtime standards established by the Act approved September 18, 1918, (Title 36, Chapter 4, D.C. Code), as amended, and wage orders issued by the Minimum Wage and Industrial Safety Board;

(2) The provisions of the Act to provide for the payment and collection of wages in the District of Columbia (Title 36, Chapter 6, D.C. Code);

(3) The provisions of Section 16-584 of the D.C. Code prohibiting the discharge from employment of an employee because of garnishment proceedings; advise employees of their rights and responsibilities under the garnishment laws of the District of Columbia; issue regulations pursuant to Section 16-572(2) of the D.C. Code establishing the maximum amounts of disposable wages of employees which may be subjected to garnishment proceedings for other than weekly pay periods; and,

(4) The provisions of Section 36-310 and 36-311 of the D.C. Code.

(c) Those of the Minimum Wage and Industrial Safety Board relating to occupational safety and health set forth in Reorganization Order No. 36, June 16, 1953, as amended; Commissioner's Order No. 70-384, September 3, 1970; and Commissioner's Order No. 71-118, April 28, 1971, except as hereinafter provided, including the authority to:

(1) require employers to furnish a safe place of employment, report employees injury, death, and disease, and maintain records of employees.

(2) administer and enforce the District of Columbia occupational safety and health laws, standards and regulations.

(3) administer and enforce the regulations relating to eye protection devices for students.

(d) Those of the District Unemployment Compensation Board, set forth in Reorganization Order No. 37, and in Commissioner's Order 71-125, dated April 2, 1971.

V. ESTABLISHMENTS

The following Boards are hereby established in the Department of Labor:

(a) **THE EMPLOYMENT SECURITY BOARD.** There is established in the Department of Labor and Employment Security Board which shall have a standing committee for employment services and a standing committee for unemployment compensation.

The Board shall advise the Director concerning development of broad based programs to alleviate unemployment and resolve problems in the District; means of obtaining cooperation among District agencies and organizations concerned with employment and unemployment problems; efforts to gain public understanding of employment service and unemployment compensation program objectives and policies; and methods of improvement of operational interrelationships between employment service and unemployment compensation agencies. The Board shall also serve as the District's advisory council for purposes of Section 11 of the Wagner-Peyser Act (29 U.S.C. 49J), as amended.

The Board's standing committee for employment services shall advise the Director with respect to policies for the operation of the Department's employment services programs and assist the Director in promoting full use of such programs by management, labor and the general public.

The Board's standing committee for unemployment compensation shall advise the Director with respect to development of legislative programs and policies for administration of unemployment compensation programs.

The Employment Security Board shall consist of its chairman and the combined membership of its two standing committees. The Mayor shall appoint the chairman of the Board and six members to each standing committee. Each committee shall include men and women and have equal representation of employees, employers, and the general public. The terms of the members shall be for three years from the date of appointment or until a successor is named, except that any appointment to fill a vacancy occurring prior to the expiration of the term shall be only for the remainder of such term. Members shall serve without compensation.

The chairman shall adopt rules of procedures for the Board and its standing committees and shall appoint a chairman of each standing committee.

(b) **THE WAGE-HOUR BOARD.** There is established in the Department of Labor a Wage-Hour Board which shall have authority to promulgate wage orders; revise wage orders; and set minimum wage and overtime compensation standards, in accordance with procedures set forth in the Act approved September 19, 1918, as amended (Title 36, Chapter 4, D.C. Code). The Board shall have authority to appoint the ad hoc advisory committee provided for in Section 36-406, D.C. Code, and designate the chairman of such ad hoc committee. The Board shall have authority to administer oaths and require by subpoena the attendance and testimony of witnesses, the production of all papers, books, accounts, records, payrolls, registers, and other evidence, and to take depositions and affidavits in any proceeding before it. With respect to wage orders, those made by the Minimum Wage and Industrial Safety Board prior to the effective date of this Reorganization Plan shall continue in full force and effect until such time as any such wage order is revised by the Wage-Hour Board established herein.

The Board shall advise the Director on matters relating to minimum wages, overtime compensation, wage payment, and wage garnishment.

REORGANIZATION OF THE DISTRICT

The Wage-Hour Board shall consist of three members appointed by the Mayor. As far as practicable members shall be so chosen that one will be representative of employers, one will be representative of employees and one representing the public. The public member shall be chairman. A quorum shall consist of any two members.

The term of office for each member of the Board shall be three years. Every vacancy shall be filled only for the unexpired portion of the term, but after the expiration of his term each member shall continue to serve until his successor is appointed and has qualified. No person who has served six years or more consecutively as a member shall be reappointed as a member until after the expiration of one year from the end of such service.

Members shall be compensated in accordance with the provisions of the Act entitled "An Act to authorize certain administrative expenses in the Government service, and for other purposes," approved August 2, 1946 (60 Stat. 806), as amended, or other applicable laws.

The Board shall adopt its own rules of procedure.

(c) THE OCCUPATIONAL SAFETY AND HEALTH BOARD. There is hereby established in the Department of Labor and Occupational Safety and Health Board which shall have authority to develop and recommend to the Mayor standards pertaining to Occupational Safety and Health issues.

The Board shall have authority to hold hearings and make decisions on temporary and permanent variances, abatement periods, penalties, and license revocations in accordance with Title 36, Chapter 4, D.C. Code.

The Board shall advise the Director on matters relating to the occupational safety and health of workers in the District of Columbia.

The Occupational Safety and Health Board shall be composed of seven members appointed by the Mayor, from among those residents of the District of Columbia who, by reason of training, education, or experience are qualified to carry out the functions of the Board. Each member shall be appointed for a term of three years, and shall be compensated in accordance with the provisions of the Act entitled "an Act to authorize certain administrative expenses in the Government service, and for other purposes," approved August 2, 1946 (60 Stat. 806), as amended, or other applicable laws. The Mayor shall designate a public member to serve as chairman. Other members shall represent management and labor interests in the private and public sector on an equal basis.

The Board shall adopt its own rules of procedure.

VI. DELEGATIONS OF AUTHORITY

(a) The Manpower Services Planning Advisory Committee, established by Commissioner's Order 74-84, dated May 24, 1974, shall serve as an advisory board to the Director on all matters pertaining to comprehensive employment and training activities in the District.

(b) The Apprenticeship Council, established under the provisions of D.C. Code 36-122, shall serve as an advisory board to the Director on matters

pertaining to apprenticeship programs in the District. The Apprenticeship Council shall retain its powers, duties, and functions under the Act approved May 20, 1946 (D.C. Code, Sections 36-121—36-133), as amended.

VII. REPEAL OF PREVIOUS ORDERS AND ABOLISHMENTS

(a) Commissioner's Order 74-81, dated May 24, 1974, relating to the establishment of the Cooperative Area Manpower Planning System (CAMPS) Staff, is hereby repealed.

(b) Commissioner's Order 75-41, dated February 26, 1975, relating to the functions of the Office of Budget Management Systems is hereby amended by striking paragraph L in Part III and redesignating the remaining last paragraph as paragraph L.

(c) The D.C. Department of Manpower, the Minimum Wage and Industrial Safety Board and the District of Columbia Unemployment Compensation Board are hereby abolished.

VIII. ORGANIZATION

The Director, in the performance of the duties and functions assigned to him, is authorized to establish such organizational components with such specified functions as he deems appropriate.

IX. TRANSFER OF FUNCTIONS, FUNDS AND OTHER RESOURCES

All positions, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the functions assigned to the Director are hereby transferred to the Department of Labor. Pursuant to the provisions of Public Law 93-198, Section 713, all positions and personnel transferred herein which are in the competitive service shall retain such status and continue to be subject to all rules and regulations governing the competitive service until such time as the D.C. Government merit system is established in accordance with Section 422 of Public Law 93-198.

X. EFFECTIVE DATE

The provisions of this Plan shall become effective pursuant to the requirements of Section 422(12) of Public Law 93-198.

MAYOR'S STATEMENT

This Administration has for some time recognized that the labor-related programs and services in the District of Columbia have been organizationally scattered and fragmented. In the past, several administrative initiatives were undertaken to unite major labor elements but these efforts were frustrated principally because a major organizational component was by law a Federal agency. This impediment was eliminated with the passage of "The Self-Government and Governmental Reorganization Act" which specifically pro-

vided for the transfer of the D.C. Manpower Administration from the United States Department of Labor to the District of Columbia Government. As a result of this new opportunity, I appointed a select executive Task Force on Labor, chaired by the City Administrator, to recommend to me a design for a District of Columbia Department of Labor with the objective of consolidating in this new Department the responsibilities for the major labor-related programs and services provided by this Government.

The enclosed Reorganization Plan embodies the results of the Task Force's extensive review of the District's labor-related services, and, thus, represents a practical and measured judgment concerning those activities to be housed in the new Department. It is our strong conviction that this new Department has a unique potential for delivering coordinated labor related services which will enhance our citizens economic security, physical well-being, and productivity as workers as well as the potential for future expansion to include other labor related activities.

Further, the combination of programs centralized in this new Department will provide a concentration of specialized resources which can be tapped to support and strengthen other major policy initiatives of our Government, such as those in economic development and housing.

A. SUMMARY OF THE PLAN:

The Plan consolidates in the proposed Department of Labor the following organizations and/or programs:

The Department of Manpower — all its current services, programs, and responsibilities.

The District Unemployment Compensation Board — all its current services, programs, and responsibilities.

From the Minimum Wage and Industrial Safety Board, the Minimum Wage and Industrial Safety Divisions — all of their current programs and responsibilities.

From the Office of Budget and Management Systems, the Comprehensive Employment and Training Act Staff and all its services, programs, and responsibilities under Titles II and VI of the Federal Comprehensive Employment and Training Act (CETA).

There are five boards affected by this reorganization: The District Unemployment Compensation Board, the Employment Security Board, the Minimum Wage and Industrial Safety Board, the Apprenticeship Council, and the Manpower Services Planning Advisory Council. Under the proposed Department, an Employment Security Board has been created to replace the District Unemployment Compensation Board and the Employment Security Board. Also in anticipation of an approved D.C. Occupational Safety and Health State Plan, the Minimum Wage and Industrial Safety Board has been abolished and two separate Boards established: the Wage-Hour Board and the Occupational Safety and Health Board.

At some date subsequent to this reorganization plan, we plan to develop proposed legislation for a locally administered workmen's compensation law.

Currently this worker protection is provided through the United States Department of Labor under provisions of the Federal Longshoreman's and Harbor Workers' Compensation Act, as well as, under the Federal Employees' Compensation Act. Upon passage of a local compensation act, we would expect that its provisions would be administered by the Department proposed by this Plan.

Organizationally, the Plan presents a Department with three major line operations and two major staff offices. The line elements are:

a. *A Bureau of Employment Security* — comprised of the employment services from the Department of Manpower and the unemployment benefit program from the District Unemployment Compensation Board.

b. *An Office of Labor Standards* — comprised of the enforcement activities of the Industrial Safety and Minimum Wage Divisions of the Minimum Wage and Industrial Safety Board. This Office will also have the broad responsibility for developing services and programs to serve workers at their place of work, and will initiate the preliminary activities to establish and operate a District workmen's compensation program.

c. *An Office of Employability Development* — comprised of the Comprehensive Employment and Training Act responsibilities now administered by the Department of Manpower and the Office of Budget and Management Services, plus the District's Apprenticeship and Training Staff.

The Staff offices would consist of:

a. *An Office of Administration and Management* — which would centralize from each of the previously independent agencies such functions as budgeting, accounting, personnel, management analysis, logistical and contractual services, and statistical research.

b. *An Office of Information Systems and Data Processing* — which would plan, design, implement, and prepare output for all departmental management information and data systems, both manual and automated, including electronic processing of payments to recipients of unemployment insurance and other manpower related monetary benefits.

B. EXPECTED BENEFITS

In the short run, we would expect to discern the following benefits:

An improvement in labor-related planning, policy development, budget formulation, accountability, management control, coordination and responsiveness in the Executive Branch of the District Government through a reduction in the executive span of control.

An improvement of service delivery through the organizational linking of the District's State Employment Service with its Unemployment Insurance program to form a traditional Employment Security System with services delivered in approximately seven community job centers.

Improved coordination of both employment service and unemployment insurance services with all programs administered by the Department

under the District's Comprehensive Employment and Training Act program (CETA).

Improved coordination in planning and administration of programs under the different Titles of the Federal Comprehensive Employment and Training Act through the consolidation of all responsibility in the new Department.

Improved relationship with the Federal Government by establishing a single point of contact and accountability in the District Government for all major programs funded through and by the U.S. Department of Labor.

Improved understanding of the functions and trends in the local labor market through the organizational consolidation of units collecting and analyzing various sources of labor information.

Improved inter-departmental coordination of policy development, planning, and program implementation, especially for manpower/labor and economic development plans of the executive branch.

Over a longer period of time, we would expect that benefits would accrue through:

An improved organizational posture to respond to changes in the economy which impacts on employment and/or unemployment, as well as changes in program delivery strategies resulting from either national or local policy initiatives.

The development of a more highly integrated service delivery system, especially for the various manpower programs, resulting in more efficient resource utilization and effective service delivery.

The development of a District managed workmen's compensation program which when operated by the Department in tandem with the occupational safety and health, and unemployment compensation program will provide a significant program for protecting the welfare and economic security of District workers.

C. ELEMENTS OF REORGANIZATION PACKAGE:

I. THE REORGANIZATION PLAN NO. 1 OF 1978

- a. Establishment Statement
- b. Purpose
- c. Functions
- d. Transfer of Functions
- e. Establishment of Employment Security Board
- f. Delegation of Authority
- g. Repeal of Previous Orders and Abolishments
- h. Organization
- i. Transfer of Functions, Funds and Other Resources
- j. Effective Date

II. PROPOSED ORGANIZATIONAL CHART OF THE DEPARTMENT OF LABOR AND ORGANIZATION CHARTS OF AMALGAMATED AGENCIES UNDER THEIR PREVIOUS STRUCTURE

III. FUNCTIONAL STATEMENTS TO THE DIVISION LEVEL IN THE
PROPOSED LABOR DEPARTMENT

IV. PROPOSED FY '78 BUDGET FOR THE DEPARTMENT OF LABOR

V. PROPOSED STAFFING PATTERN FOR THE DEPARTMENT OF LA-
BOR

Subchapter III. 1979.

Part A

REORGANIZATION PLAN NO. 2 OF 1979.

(Effective February 21, 1980).

Prepared by the Mayor and transmitted to the Council of the District of Columbia on November 20, 1979, pursuant to the provisions of Section 422(12) of the District Charter.

D.C. DEPARTMENT OF HUMAN SERVICES

I. ESTABLISHMENT

There is established, in the Executive Branch of the Government of the District of Columbia, the Department of Human Services headed by a Director of Human Services, who shall coordinate and direct the operations of the department through the Commissioners of Public Health and Social Services and subordinate organizational components established herein.

II. PURPOSE

The Department of Human Services is established to assure that public health and social service policy is developed and implemented in response to the needs of individuals and families in the District of Columbia, and to promote the health, mental health and well-being of District residents through the delivery of high quality and equitably distributed services and income assistance programs.

III. ORGANIZATION

There are hereby established in the Department of Human Services: (1) the Office of the Director, with such subordinate staff offices as are required to carry out overall management responsibility for the Department, planning and policy review, and assurance of compliance with statutes and regulations affecting the department; the state responsibility for education and veterans programs shall also be placed in the Director's office; (2) the Office of Public Health, headed by a Commissioner of Public Health who shall be delegated responsibility for developing and implementing health programs through

subordinate staff offices and administrations; and (3) the Office of Social Services, headed by a Commissioner of Social Services who shall be delegated responsibility for developing and implementing social service programs through subordinate staff offices and administrations.

IV. FUNCTIONS

The functions of the major organizational components of the Department shall be as follows:

A. OFFICE OF THE DIRECTOR OF HUMAN SERVICES

Oversees operations of a large, complex health and social services agency.

Provides policy leadership to evaluate and improve human services in the District of Columbia, coordinating public programs with private services to achieve equitable, high quality health care and social services for all citizens. Coordinates human services at the delivery and at the policy level, both within the Department and with other District agencies. Analyzes needs of District residents in health, social services, and related areas, and evaluates response of public programs to those needs.

Advises the Mayor and the City Administrator on all aspects of human resource programs, implementing Mayoral policy priorities and recommending specific actions to assure effective utilization of resources.

Assures effective management throughout the Department by means of supervision of key officials, and final approval of major policies and decisions (resource allocation, state plans and grant proposals, legislative or organizational recommendations, personnel actions, contracts and procurement). Assures compliance of health and social services facilities with federal and state regulations standards. Exercises quality control to minimize waste or abuse in large scale transfer payment programs. Assures the efficient and effective use of resources, including both dollars and personnel. Develops and makes operational policies, procedures and systems to assure coordination and integration at all levels within the Department, and with related programs.

Carries out responsibilities through delegation of major functions to a Commissioner of Public Health and a Commissioner of Social Services. Also supervises nine staff offices as follows:

(1) STATE EDUCATION AFFAIRS

Develops and administers state plans and programs for State Student Incentive Grants, postsecondary student loan programs, and programs authorized by the Higher Education Act of 1965.

(2) VETERANS AFFAIRS

Provides counseling, representation, technical assistance, and support services to veterans, their dependents and beneficiaries. Obtains for its clients the rights, benefits and privileges for which they are eligible.

(3) ADMINISTRATION

Responsible for administrative support systems: procurement, contracting, property and supply management, forms management, operation of facilities, audio-visual services, printing, mail, messengers, transportation.

(4) CONTROLLER

Coordinates the formulation, justification and presentation of DHS's annual budget submission. Exercises control over DHS expenditures; administers Financial Management System and cost analysis programs. Issues periodic reports to program officials. Maintains control over authorized personnel ceiling.

(5) LICENSING AND CERTIFICATION

Consolidates legislative and administrative regulations for health and social services facilities and services. Establishes and implements licensing procedures. Certifies providers for Medicaid reimbursement. Provides nursing and nutrition consultation services.

(6) POLICY AND PLANNING

Develops and assures the implementation of the comprehensive state health plan, the state mental health plan, and the medical facilities plan, performing the functions of the State Health Planning and Development Agency, as required by P.L. 93-641 and P.L. 93-64, within the overall framework of District of Columbia comprehensive planning. Assures compliance of District health facilities and providers with state planning goals by implementing the Certificate of Need and federal grant review functions defined by P.L. 93-641. Keeps the Director and the Commissioner of Public Health advised of laws, regulations and policies affecting health services planning. Provides technical and staff support to the State Health Coordinating Committee (SHCC). Reviews and provides for SHCC review of the state health and mental health plan, alcoholism prevention plan, substance abuse plan, and categorical grant requests in compliance with local, state and federal guidelines and District policy goals.

Develops and assures the implementation of the comprehensive state social services plan required by Title XX of the Social Security Act. Keeps the Director and the Commissioner of Social Services advised of laws, regulations and policies affecting social services planning and delivery. Reviews all state and categorical social service plans for compliance with local, state and federal guidelines and District policy goals.

Collects and publishes data and statistics in regard to health care and social services utilization, and selected health and social status indices.

(7) FAIR HEARINGS

Assures a hearing to an applicant for or recipient of any type of assistance or service provided by the Department of Human Services, to an applicant for or recipient of a license granted by the Department of Human Services, or to the provider of any service pursuant to a

REORGANIZATION OF THE DISTRICT

contract with the Department of Human Services, whose claim or application has been denied or who is aggrieved by any other action or inaction of the Department of Human Services which affects the receipt, suspension, reduction, or termination of his assistance.

(8) INSPECTION AND COMPLIANCE

Assures compliance with statutes and regulations governing the Department by clients, vendors and employees; conducts quality control audits and investigations; maintains security within the Department.

(9) INFORMATION SYSTEMS

Develops, coordinates and operates all automatic data processing systems throughout the Department.

B. OFFICE OF THE COMMISSIONER OF PUBLIC HEALTH

Oversees planning, financing and delivery of city-wide health care programs and services.

Provides policy leadership and advocacy for assuring equitable access to high quality health and mental health care services; for encouraging the development of high quality health care and hospital services; promoting restraint of health care costs; for assuring the participation of consumers and providers in health and mental health care policy making; and for the overall promotion of health advocacy in the District of Columbia.

Develops and implements management systems, organizational structures, and procedures to assure (1) cost-effective use of public resources to accomplish program goals; (2) full compliance with legislation and regulations affecting health care delivery which are delegated to the Department; and (3) coordination of programs with D.C. General Hospital, with the Office on Aging, and with private sector institutions and health professionals.

Provides policy and program guidance for special initiatives such as health promotion, deinstitutionalization, improved maternal and child health, and improved dental care.

Programs are carried out in four staff offices and five line administrations:

(1) OFFICE OF HEALTH PLANNING AND DEVELOPMENT

Has delegated responsibility to develop preparatory material for comprehensive state health and mental health plans. Assists appropriate administrations in program planning and the preparation of federally required state plans, categorical plans, and grant proposals in accordance with the provisions of applicable federal legislation and within the overall framework of District of Columbia comprehensive planning.

Provides technical guidance and assures compliance with federal and state regulations and guidelines governing the submission and implementation of state plans. Keeps the Commissioner advised of pending or proposed legislation and national programs affecting health policies and service delivery.

(2) OFFICE OF CHIEF MEDICAL EXAMINER

Administers technical programs and services for the medical investigation of all except clearly natural deaths in the District of Columbia, in accordance with the provisions of Section III of P.L. 91-358 and Commissioner's Order 71-16 as amended.

(3) OFFICE OF HEALTH CARE FINANCING

Administers the Medicaid program in respect to policy, scope of service, utilization and compliance with federal guidelines, delegating eligibility determination to the Payments Assistance Administration, and billing and payments to the Office of the Controller. Administers the Medical Charities programs, delegating eligibility determination and payments as above. Provides the Commissioner of Public Health with policy analysis of the impact of Medicare, Medicaid, and Medical Charities programs on the access of low-income and elderly citizens to equitable and high quality health care. Analyzes and recommends rate setting and other mechanisms for appropriate public actions to contain rising medical care costs.

(4) OFFICE OF EMERGENCY MEDICAL SERVICES

Assures an effective level of emergency medical services for District residents, workers and visitors, through the establishment and enforcement of state regulations and the designation of cost-effective and well equipped trauma centers. In collaboration with the Fire Department maintains adequate ambulance and paramedic services.

(5) PREVENTIVE HEALTH SERVICES ADMINISTRATION

Provides policy leadership to assure the promotion of District residents' health through the development of sound preventive and educational programs which focus on community-based environmental health. Implements state plans for tuberculosis and venereal disease control, lead poisoning control, and maternal and child nutrition programs. Directs programs for prevention and control of communicable and chronic diseases, childhood diseases and cancer. Manages community education programs to promote the health of District residents in relation to smoking, hypertension, accident prevention, and like problems. Operates the Central Laboratory. Analyzes data on morbidity and mortality rates and causes, and recommends program priorities to the Commissioner of Public Health.

(6) AMBULATORY HEALTH CARE ADMINISTRATION

Develops, recommends and implements a program of outpatient health care, including needs assessment, resource allocation, scope of services, work force needs, service priorities and strategies for cooperation with private providers. Administers a network of clinic-based services which are preventive, diagnostic, therapeutic and restorative for persons neither hospitalized nor institutionalized. Promotes a high-quality and cost-effective system which emphasizes coordinated and comprehensive care to the patient, while maintaining expertise in identifiable categorical units.

REORGANIZATION OF THE DISTRICT

(7) LONG TERM CARE ADMINISTRATION

Develops, recommends and implements a program of long term health care, including needs assessment, resource allocation, scope of services, comparative analysis of direct operation and contractual services, work force needs, service priorities and strategies for cooperation with private providers and the Office on Aging. Administers facilities for patients in need of skilled or intermediate nursing care or long-term treatment and rehabilitation (D.C. Village, Glenn Dale Hospital and J.B. Johnson Extended Care Facility). Promotes deinstitutionalization of such patients and the development of sufficient nursing home capacity to accommodate the need. Administers home care, and nursing services to assist eligible aged and disabled patients who do not require inpatient care or supervision.

(8) MENTAL HEALTH CARE ADMINISTRATION

Assists in the development of a mental health care plan which meets the requirements of P.L. 93-64 and the needs of District residents, as well as making maximum use of cooperative services developed with Saint Elizabeths Hospital. Provides policy and program leadership for community support programs for patients on convalescent leave or discharged status from Saint Elizabeths Hospital. Emphasizes priority problems including the needs of alienated or disturbed youth. Administers a network of Community Mental Health Centers, consultation services, preventive education, suicide prevention and forensic psychiatry services. Works closely with Ambulatory Health Care Administration and Alcohol and Drug Abuse Administration to make maximum cost-effective use of clinical and preventive resources for related programs.

(9) ALCOHOLISM AND DRUG ABUSE ADMINISTRATION

Develops, recommends and implements state alcoholism and drug abuse plans which meet the requirements of P.L. 92-225 and the needs of District residents. Works closely with Ambulatory Health Care Administration and Mental Health Services Administration as well as the courts and the Corrections Department to make maximum cost-effective use of clinical and preventive resources for related programs. Provides policy leadership for community-based prevention, education and treatment programs. Administers detoxification and rehabilitation centers, residential treatment centers and outpatient clinics for the treatment of alcoholics and substance abusers.

C. OFFICE OF THE COMMISSIONER OF SOCIAL SERVICES

Oversees planning, financing and delivery of city-wide social services programs.

Provides policy leadership and advocacy for assuring equitable access to high quality day care, child welfare, rehabilitation and family services; developing and implementing strategies to promote cooperation with voluntary associations and private providers; assuring the participation of

consumers and providers in policy making; and the promotion of family stability and economic independence for District residents.

Develops and implements management systems, organizational structures, and procedures to assure (1) accurate assessment of economic and social status and needs of District residents; (2) cost-effective use of public resources to accomplish program goals; (3) full compliance with legislation and regulations affecting social services delivery which are delegated to the Department; (4) coordination of programs with the Office on Aging, the Departments of Corrections, Recreation, Housing and Community Development and Labor, the Court system and Corporation Counsel [now Attorney General for the District of Columbia], and with private sector institutions and professionals; and (5) prevention of fraud and abuse in payments assistance programs.

Provides policy and program guidance for special initiatives such as the deinstitutionalization of mentally retarded and developmentally disabled persons from Forest Haven; response to the growing need for help for abused and neglected children and their families; coordination of city-wide programs to serve youth; and the development of high quality day care services.

Programs are carried out in one office and five line administrations:

(1) OFFICE OF SOCIAL SERVICES PLANNING AND DEVELOPMENT

Has delegated responsibility to develop preparatory material for comprehensive social services planning. Assists appropriate program administrations in the development of the annual and long range state plans for Food Stamps, cash assistance, child welfare, and the Mentally Retarded and Developmentally Disabled, categorical plans and grant proposals in accordance with the provisions of applicable federal legislation and within the overall framework of District of Columbia comprehensive planning. Provides technical guidance on compliance with federal and state regulations and guidelines governing the submission and implementation of state plans. Keeps the Commissioner advised of pending or proposed legislation and national programs affecting social services policies and service delivery.

(2) MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES SERVICES ADMINISTRATION

Develops, recommends and implements a program of services to the mentally retarded and developmentally disabled, including needs assessment, resource allocation, and program priorities. Implements the Constitutional Rights of the Mentally Retarded Act of 1979. Operates Forest Haven facility, and assures appropriate outplacement of residents. Administers diagnostic, educational, therapeutic, and home-based services. Coordinates programs with Vocational Rehabilitation Administration.

(3) VOCATIONAL REHABILITATION ADMINISTRATION

In cooperation with the Office of Social Services Planning and Development, provides for needs assessment, and develops state plan for

REORGANIZATION OF THE DISTRICT

resource allocation, program priorities and rehabilitation services to physically, mentally and emotionally disabled residents. Determines eligibility for federal social security disability programs. Administers state plan and individual rehabilitation plans for District residents eligible under provisions of the Vocational Rehabilitation Act.

(4) YOUTH SERVICES ADMINISTRATION

Provides institutional and after care services to youth who are adjudicated delinquents, or are in pre-hearing and pre-trial status. Operates the Receiving Home for pre-hearing detention, and the Cedar Knoll School and the Oak Hill Youth Center for adjudicated detention. Administers alternative group homes for status offenders and pre-trial detention. Works closely with the public schools, the Department of Labor, the Department of Recreation and the juvenile justice system to assure city-wide education, training, employment and recreation opportunities for youth.

(5) CHILD AND FAMILY SERVICES ADMINISTRATION

Assists in the development of needs assessment and state plan priorities for Title XX services. Develops cooperative and contractual arrangements for Title XX services administered in other organizational units. Develops, recommends and implements a program of child welfare services. Implements the Prevention of Child Abuse and Neglect Act of 1977 (P.L. 2-22). Administers adult protective and emergency shelter services.

(6) INCOME MAINTENANCE ADMINISTRATION

Provides financial, medical and food stamp assistance to eligible residents of the District. Determines eligibility for programs. Maintains case files and performs regular recertifications to prevent fraud and abuse. Works closely with the Child and Family Services Administration to integrate client intake at service sites. Issues manuals and trains workers for eligibility determinations. Assures compliance with federal regulations and guidelines governing transfer payment programs.

V. TRANSFERS

There is hereby transferred to the Director of Human Services all powers, duties, and functions assigned or delegated to the Director of the Department of Human Resources as of the date immediately prior to the effective date of this Reorganization Plan. All positions, property, allocations, and other funds, available or to be made available relating to the powers, duties and functions assigned herein are hereby transferred to the Department of Human Services.

VI. Realignment

The Director of Human Services, in the performance of assigned duties and functions, is authorized to complete the realignment of the organizational components of the Department herein established by means of redelegations of functions among organizational units and reassignment of departmental

positions among control and responsibility centers, or by the elimination or establishment of alternative responsibility centers, in order to accomplish the following specific objectives:

1. To strengthen management capacity at the supervisory level of individual programs, and to clarify the missions of program chiefs.
2. To consolidate functions as appropriate to reduce duplication, and improve cost-effectiveness.
3. To consolidate the resources necessary to improve response to legal challenges and implementation of court orders which affect service delivery, and to implement new legislation.
4. To restructure the facilities management and operations functions so that directors of facilities have full responsibility for cost-effective management, for certification of facilities in order to gain federal reimbursement, and for compliance with existing codes and regulations.
5. To restructure the materiel support and procurement functions so that program managers have full responsibility for the development, oversight and evaluation of negotiated services contracts and for compliance with regulations governing the terms of contracts, and so that the procurement of goods and services is accomplished as efficiently and cost-effectively as possible.
6. To restructure the audio-visual and printing services and the consumer information and volunteer coordination functions to make maximum use of these resources throughout the Department.
7. To restructure the Office of the Controller so that the Commissioner of Public Health and the Commissioner of Social Services have adequate fiscal management and budget office resources to perform the high level of budget development and control expected of them.
8. To restructure all data processing, collecting and management information systems offices throughout the Department, in order to improve the accuracy, timeliness, and utility of all such systems.
9. To restructure the licensing and certification functions to assure high level professional participation in state regulation of services, and to avoid potential conflicts of interest between program expansion and strict adherence to high standards.
10. To restructure the state planning functions within the agency to create an appropriate division of responsibility and coordination among the program levels of the department.
11. To restructure the immediate offices of the Commissioners of Public Health and Social Services to assure the most effective staffing patterns to achieve management oversight and leadership on major policy initiatives.
12. To develop greater emphasis on health education, promotion, advocacy and prevention programs.
13. To improve coordination of mental health care services with St. Elizabeths Hospital, and more effectively to address the judicial mandate on deinstitutionalization.
14. To focus appropriate resources on long term care needs and the development of public and private resources to meet those needs.

REORGANIZATION OF THE DISTRICT

15. To develop leadership for a more responsible and responsive dental care system.

16. To develop a more adequate Emergency Medical Services system for the District.

17. To develop a more adequate city-wide program to address the needs of the mentally retarded and developmentally disabled, more effectively to carry out the deinstitutionalization program at Forest Haven, and to coordinate more closely with other rehabilitation programs.

18. To restructure the Youth Services and Child and Family Services Administration to consolidate programs where appropriate and manage services more effectively.

VII. ABOLISHMENT

The District of Columbia Department of Human Resources is hereby abolished.

VIII. EFFECTIVE DATE

This Reorganization Plan No. 2 of 1979 shall become effective in accordance with Section 422(12) of P.L. 93-198.

MAYOR'S STATEMENT

The Department of Human Resources was created in 1970 by the merger of the Departments of Vocational Rehabilitation, Public Health, Public Welfare, and Veterans Affairs. Its resources now include approximately 8,000 employees and a budget of over \$440 million.

The purpose of this consolidation was to assure that public health and social services programs responded to the needs of individuals and families in an integrated and holistic fashion. The structure was intended to enable citizens to obtain in unified centers the information, forms, and counseling they required to participate in programs to which they were entitled. It would also enable managers to coordinate and take account of all the factors that should go into policies and decisions about resources and priorities.

However, this valid and important promise has never been fully realized. Nor has the quality of health care, rehabilitation services, income maintenance programs, and child, youth and family services over this decade been as high as the citizens of the District expect and deserve.

One of the chief goals of this Administration is to improve and coordinate those services. The heart of any government lies in the quality of its response to people in need. Citizens of the District have the right to expect prompt access to public services when they need them and are eligible to receive them, in a straightforward and courteous setting. Guidelines for services should be clear and available to everyone. Moreover, the quality of public services should be as high as the quality of private services. It is our responsibility to use the planning, regulating and priority setting powers of government to achieve uniform high standards of health care and social services, so that those who

need financial help are not relegated to separate and low quality systems. Equally important, it is the job of government to encourage private provision of human services wherever possible, and to be sure that those private professionals who share in public services benefit from an efficient and responsive partnership with government.

I have therefore examined our deficiencies in respect to these goals of accessibility, quality and cost-effectiveness. I have particularly questioned the extent to which the organizational size and structure of the Department of Human Resources accounts for the difficulties which clients and service providers encounter, and what structural changes would cure these deficiencies.

It was my initial judgment that the most effective way to proceed would be to reduce the size of the departmental bureaucracy and to assure clear focus for independent advocacy of health needs in the District by creating an independent health authority. My transition policy team cautioned me, however, that the issues related to such a separation were complex, and that an immediate organizational decision of this kind would not necessarily accomplish my purpose.

Therefore, early this year I created a special task force under the leadership of Dr. Arthur Hoyte to draw up the functional components of an independent health department, and to assess the impact of such a change on health care in the District. Concurrently we have explored other alternatives, carrying out with leadership in the Department of Human Resources, with members of the executive staff, and with community and professional leadership an intensive examination of policy and management issues. We have reviewed the two recent major analyses of the Department, one carried out in 1977 by a Mayor's Panel on the Organization and Management of Human Resources Programs, and the other in 1978 by a City Council Task Force on the Reorganization of the Department of Human Resources.

My conclusion is that in order to overcome the deficiencies which now exist in human services programs we must proceed through several stages. The Department of Human Resources is large and complex; it accounts for over one-third of our operating department budget. It carries out many state responsibilities that have dramatically changed and increased over the last decade; its internal administrative structure is not well suited to these changing requirements for state planning and accountability for federal funds. Internal management procedures are weak; the department lacks mechanisms to produce integration of policy, planning and operational decisions at the appropriate level.

I am therefore proposing at this time a reorganization which addresses these immediate problems. I believe that we must concentrate on internal administrative and management reorganization before fundamental program and public policy decisions can be effectively staffed and appropriately debated.

I am aware that the organized medical community would prefer to move forward at once to an independent health department. Many agree with me, however, that such a separation would not in itself guarantee an improvement in services, and have expressed their willingness to support these internal

management improvements as a first step. We are agreed that my proposal does not preclude the alternative of a separate department in the future, if implementation of this Reorganization Plan does not produce the improvement in health care policy formulation and services which is our common goal.

This Reorganization Plan therefore contains the first two steps in what I expect to be a continuing evaluation and improvement in health and social services in the District.

PHASE ONE

The first step, which will take place immediately upon Council approval, thoroughly restructures senior management responsibility and accountability within the Department. It brings together under the authority of those managers the staff and budget resources which will enable them to meet newly defined responsibility to coordinate planning, policy formulation, and implementation of programs.

I propose to reemphasize the ultimate goal of the agency by renaming it the Department of Human Services. The Director of the Department will have fewer direct administrative responsibilities, and a stronger mandate to shape overall public policy and service coordination, as well as to set and impose a far higher standard of management performance throughout the agency.

At the most senior level of the Department the Reorganization Plan creates two new key positions:

In order to achieve a consolidated point of accountability for health care policy and service delivery, and a focus for a more productive engagement of the private sector in public policy decisions, the Plan calls for a Commissioner of Public Health. The responsibilities of that Commissioner will include the grouping of programs now found in three of the Department's administrations and in parts of Executive Direction and Support. I have chosen to include authority for health, mental health, and drug and alcohol abuse services under a single Commissioner in order to emphasize my belief that the health of the body and of the mind are closely related. I expect the planning and implementation of each program area to be improved, and all of them properly coordinated to meet the health and mental health needs of District citizens.

The Reorganization Plan proposes a corresponding position of Commissioner of Social Services, with a unified responsibility at the most senior level for rehabilitation programs, income assistance programs, and the services provided to children, youth and families. In consolidating new leadership for social services, I will require a more productive partnership with the federal government and the private sector, and more efficient use of District resources.

The creation of these two key positions is accompanied by the dismantling of the Office of State Agency Affairs and the Office of Planning and Evaluation. The offices of the five line administrators (Community Health and Hospitals, Mental Health, Substance Abuse, Social Rehabilitation, and Payments Assistance) are also converted to a different configuration of responsibilities. As a result, the total number of executive level positions in the Department will not be increased.

This initial realignment of senior executive staff and program offices will produce several immediate benefits:

It will put the necessary staff and budget resources in the hands of senior program managers who have responsibility for shaping policy recommendations and administrative services.

It will allow the Director of Commissioners to focus on long-range planning, policy and management concerns.

It will provide a clear focus for discussion and development of health care and social services policy issues.

It will allow for increased emphasis on policy initiatives such as health promotion, promotion of dental care, reduction of infant mortality rates, and consolidation of programs for youth.

It will allow more effective involvement of officials at the program level with those at the planning and evaluation level, to the advantage of both.

It will assure better integration of federal and District resources in the achievement of program objectives, and hold program managers accountable for compliance with local, state, and federal policies and procedures.

PHASE TWO

The remainder of FY 1980 will be devoted to completing and refining this Reorganization Plan. In the process each major administration, bureau, and office will be reviewed and restructured to achieve clearer and more accountable job definitions for middle management personnel, and to implement important policy objectives detailed in the plan. Additional benefits will flow from this phase of the plan:

Improved relationships between program administrators and federal officials.

Timely compliance in carrying out state and local planning functions.

Better linkage of budget preparation to the planning process, and to policy priorities.

Increased program accountability to the public, the Mayor and legislators.

Improved administrative procedures for data collection, needs assessment, facilities management, contracting and procurement.

Implementation of performance standards for personnel.

Assurance of compliance with federal and local legislation and regulations governing the Department.

Improved standard setting and regulation of facilities.

Coordination of services to avoid duplication and encourage the most cost-effective programs.

Improved response to legal challenges in respect to services, and implementation of relevant court orders.

FUTURE STEPS

This Reorganization Plan does not alter the overall functions and responsibilities of the Department, nor does it represent any change in present budget

REORGANIZATION OF THE DISTRICT

allocations for programs or policy priorities already established in the FY 1980 budget. It does alter the distribution of management resources and responsibilities, and thus provides the basis on which better policy and resource allocation recommendations can rationally and publicly be made in the coming months.

Because policy focus and advocacy will be more visibly located, citizens and Council members can have more effective access to decision makers within the Department. Because operational accountability is more specific, the City Administrator will be able to apply the management performance standards which we are generating throughout the government.

The effective delivery of health care and social services, in a time of budget constraints and increasing urban needs, is a challenge to every major city in the United States. I submit that this Reorganization Plan is the necessary next step in my continuing commitment to achieving accessible, high quality and cost-effective human services in the District of Columbia.

Subchapter IV. 1980.

Part A

REORGANIZATION PLAN NO. 1 OF 1980.

(Effective April 17, 1980).

Prepared by the Mayor and transmitted to the Council of the District of Columbia on January 28, 1980, pursuant to the provisions of Section 422(12) of the District Charter.

DEPARTMENT OF EMPLOYMENT SERVICES

I. ESTABLISHMENT

There is established, in the Executive Branch of the Government of the District of Columbia, the Department of Employment Services headed by a Director who shall perform the functions herein transferred, delegated, or otherwise assigned to him, and who shall have the authority to redelegate such functions as he deems necessary.

II. PURPOSE

The Department of Employment Services is established to provide opportunities for citizens and other eligible individuals to prepare for, find, and maintain gainful employment; to provide training and supportive services to the unemployed, underemployed and disadvantaged; to provide income maintenance to mitigate the effects of unemployment; and to promote the working conditions of wage earners by protecting their health, safety, wages, rights and benefits.

III. ORGANIZATION

The Director, in the performance of the duties and functions assigned to him, is authorized to establish such organizational components with such specified functions as he deems appropriate.

There is hereby established in the Department of Employment Services the following:

A. The Office of the Director, with such subordinate staff offices as are required to carry out overall management responsibility for the Department, planning and policy review, and assurance of compliance with statutes and regulations affecting the Department; the state responsibility for employment and training, labor management, equal employment opportunity and veterans programs.

B. The Office of the Deputy Director for Finance, Administration and Management services, which is delegated the responsibility to centralize and manage the collection and distribution of financial and activity data, which includes but is not limited to the planning, coordination, control and technical support for agency staff and contractors in financial and grant management.

C. The Office of the Deputy Director for Program Operations, which is delegated the responsibility for insuring that clients receive the comprehensive employment and training services to which they are entitled.

D. The Office of the Deputy Director for Labor Standards Administration which is delegated the responsibility to insure better coordination between the Wage and Hour (W&H), the Occupational Safety and Health (OS&H) Programs, and to direct the expansion of the OS&H Program and the development of a sound Worker's Compensation Program for the District.

IV. FUNCTIONS

The functions contained herein are transferred to the Director and shall be performed by the following major organizational components of the Department:

A. OFFICE OF THE DIRECTOR, DEPARTMENT OF EMPLOYMENT SERVICES

Oversees operations of a large, complex labor and employment and training agency.

Provides policy leadership to evaluate and improve labor and employment and training services in the District of Columbia, coordinating public programs with private services to achieve equitable, high quality job services for all citizens. Coordinates labor services at the delivery and policy levels, both within the Department and with other District agencies. Analyzes the needs of District residents in employment, unemployment, training, counseling, testing, and related areas, and evaluates the response of public programs to those needs.

REORGANIZATION OF THE DISTRICT

Advises the Mayor and the City Administrator on all aspects of the programs dealing with employment, training, supportive services and labor standards, implementing Mayoral policy priorities and recommending specific actions to assure effective utilization of resources.

Assures effective management throughout the Department by means of supervision of key officials, and final approval of major policies and decisions (resource allocation, state plans and grant proposals, legislative or organizational recommendations, personnel actions, contracts and procurement). Assures compliance with Federal and state regulations, standards and legislation. Exercises quality control to minimize waste or abuse in large scale transfer payment programs. Assures the efficient and effective use of resources, including both dollars and personnel. Develops and makes operational policies, procedures and systems to assure coordination and integration at all levels within the Department, and with related programs.

Carries out responsibilities through the delegation of major functions to a Deputy Director of Finance, Administration and Management, a Deputy Director of Program Operations and a Deputy Director of Labor Standards. Also the Director supervises the five staff office Assistant Directors listed below:

1. OFFICE OF COMMUNITY RELATIONS AND PUBLIC SERVICE

Plans, coordinates and executes a public service program to increase community understanding of Department of Employment Services (DOES) programs and services. Solicits employers and potential employees to understand the workings of the labor market and benefit from DOES programs and services.

2. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

Plans, coordinates, implements, and administers continuing Department programs designed to promote and maintain equal opportunity for all employment practices to the maximum possible extent, including but not limited to: recruitment, hiring, transfer, promotion, benefits, training, mobility, termination, and for impartial treatment of DOES employees, job and training applicants, employers, benefit claimants and enrollees in employability development programs.

Maintains and follows procedures established to resolve any complaints dealing with the Comprehensive Employment Training Administration (CETA) or alleged discrimination.

Participates with public and private groups in affirmative cooperative actions to improve equal employment opportunity throughout the community.

3. OFFICE OF TECHNICAL SERVICES

Provides a technical service program to various components of the agency on the interrelationships and linkages that occur between each component. Also works with grantee, subgrantee, contractors and subcontractors in the delivery of DOES programs.

4. OFFICE OF PROGRAM PLANNING, RESEARCH AND ANALYSIS

Advises the Director on overall policies, plans and objectives for all programs of the District of Columbia Department of Employment Services (DOES).

Assists in coordinating internal Department of Employment Services planning, ongoing performance against plan, analysis of the Department of Employment Services performance and related administrative support. Integrates related outside planning processes with those of the Department of Employment Services, provides guidance, technical assistance, and program assistance within the Department of Employment Services through operational research, training, and management, and provides input into the development and dissemination of a comprehensive management information system.

5. OFFICE OF COMPLIANCE AND INDEPENDENT MONITORING

Administers a comprehensive program to assure that all program activities and services administration and management practices, including a comprehensive employment and training plan supported with funds under the Comprehensive Employment and Training Act (CETA), Employment Service (ES), Unemployment Insurance (UI), and Work Incentive Program (WIN) legislation, comply with the provisions of the legislation, governing regulations and/or the terms of any ongoing agreements. Ensures that adequate monitoring coverage and appropriate actions on findings and recommendations are rendered on a timely basis.

B. OFFICE OF THE DEPUTY DIRECTOR OF FINANCE,
ADMINISTRATION AND MANAGEMENT

Plans, conducts and coordinates, in accordance with appropriate laws, regulations and policies, and in support of agency goals and objectives, a program of financial, administrative and management support of the Department of Employment Services. Such a program includes: management consultation and analysis; all aspects of financial management; administrative support; contracting services; and a comprehensive information and data processing system. Acts as liaison in providing assistance in the development and implementation of the District's new financial management system.

Programs are carried out in three support offices.

1. OFFICE OF BUDGET AND FINANCE

Designs, establishes and maintains an integrated management system to include budgeting, accounting, managerial-financial reporting and control in accordance with applicable laws and regulations compatible with Department of Employment Services management needs. Plans, develops and administers a comprehensive management analysis program within the Department of Employment Ser-

REORGANIZATION OF THE DISTRICT

vices to insure an efficient and effective department; develops proposals and provides recommendations to technical agencies, state agencies, and private industry.

2. OFFICE OF MANAGEMENT INFORMATION AND DATA SYSTEMS

Plans, develops, administers and implements a comprehensive information and data processing system. Receives, synthesizes and disseminates information in support of labor market research. Plans and develops information gathering, storage and retrieval systems. Designs and implements programs necessary to generate information required by the Department of Employment Services offices.

3. OFFICE OF CONTRACTS AND SUPPORT SERVICES

Provides contract services for the Department of Employment Services in the area of administration and contract processing, including assistance in negotiations, review, examination and administration. Furnishes comprehensive logistical support services to administrative and operating components of the Department of Employment Services and its operating agents. Such services include: procurement of supplies, property and paperwork management, printing and duplication, mail and messenger services, safety and security services, and property maintenance.

C. OFFICE OF THE DEPUTY DIRECTOR FOR PROGRAM OPERATIONS

Plans, conducts and coordinates the implementation of programs to meet the needs of program participants, for the economically disadvantaged, unemployed and underemployed residents of the District in accordance with appropriate laws, regulations and policies. Programs include but are not limited to those dealing with comprehensive employability development, employment service, Apprenticeship, Work Incentive Program (WIN), Job Corps, alien certification, Comprehensive Employment and Training Act (CETA), Unemployment Insurance (UI) and various other special District appropriated programs. Emphasizes the degree to which such programs are designed to and meet the employment needs of selected target groups.

Manages the delivery of job development and placement services, and services to employers of the District to insure the hiring, training and retention of qualified job applicants, particularly those from selected target populations.

Programs are carried out in four support offices.

1. OFFICE OF EMPLOYABILITY DEVELOPMENT

Administers a comprehensive technical assistance and support program of employment and training opportunities for economically disadvantaged, unemployed and underemployed residents of the District of Columbia, to include programs designed to meet the employment needs of selected target populations and to provide employment oriented supportive services.

Develops and provides technical assistance for the implementation of District and/or other employability development plans and grants considering recommendations of the D.C. Manpower Services Planning Advisory Council (MSPAC) and other departmental plans and programs.

Prepares, disseminates and coordinates, with appropriate Department of Employment Services (DOES) and other District Government components, the evaluation of all requests for proposals used in the delivery of services required for all CETA and other employability development activities.

Negotiates, recommends selection and finalizes all jurisdictional CETA and other appropriate contracts and subgrants and oversees the functions of contractors/subgrantees.

2. OFFICE OF EMPLOYMENT SERVICE

Administers a program of employment service technical assistance and support to District of Columbia Department of Employment Services staff, and provides services to employers to achieve improved utilization of manpower resources.

Provides technical assistance to field staff on the utilization of job opportunity information for applicants in the metropolitan area, through administration and management of the Job Bank system.

Provides technical assistance on outreach, recruitment and employment service activities, and advises on assessment procedures for applicants for employment or training opportunities, including applicants having special needs in the labor market such as veterans, handicapped, disadvantaged, youth, women, offenders, welfare recipients, Spanish heritage and persons receiving UI benefits.

3. OFFICE OF COMPREHENSIVE CENTERS

Plans, develops and administers a program of comprehensive employment and training services to eligible clients to provide unemployment insurance benefits and comprehensive employment and employability development services through full service centers located in various locations in the District of Columbia.

4. OFFICE OF UNEMPLOYMENT COMPENSATION

Plans, develops and administers an unemployment insurance technical assistance and specialized program pursuant to the provisions of the District of Columbia Unemployment Compensation Act and applicable Federal laws.

Determines employer liability under the District law, advises employers regarding status of liability; establishes individual employer tax rates; collects contributions and interest charges; audits employer records to insure compliance with District law; controls employer account and experience rating records; and evaluates legal and related provisions applying to coverage.

Directs the activities of the appeals staff which schedules, conducts, records, and adjudicates appeals of determinations rendered pursuant to UI, WIN and/or CETA programs.

REORGANIZATION OF THE DISTRICT

Controls and audits benefit payments, maintains records regarding benefit charges; receives and administers requests for transfer of wages from other states.

D. OFFICE OF THE DEPUTY DIRECTOR FOR LABOR STANDARDS

Plans, develops and administers a comprehensive program that, pursuant to District and Federal law, protects and serves workers at their places of employment. Administers the wage-hour and occupational safety and health laws applicable in the District and manages and coordinates overall program operations for minimum wage and occupational safety and health.

Formulates legislative recommendations for the Worker's Compensation Program to be administered by the District. Plans for implementation of the Worker's Compensation Program.

Provides staff and technical assistance to the Wage-Hour Board and Occupational Safety and Health Board.

Programs are carried out in three support units.

1. OFFICE OF WAGE-HOUR

Plans and administers a program to ensure compliance with the District of Columbia Minimum Wage Act and the D.C. Wage Payment and Wage Collection Law, the Seats Law, and the District of Columbia Wage Garnishment Law's prohibition against discharging employees whose wages are subject to wage garnishment.

Investigates and holds hearings on any alleged violations, including claims that wages have not been paid in accordance with applicable laws and that such unpaid wages constitute enforceable claims against the employer.

Examines economic indicators and labor market conditions to determine an adequate and equitable minimum wage; provides the Wage-Hour Board with data requisite to the determination of the minimum wage.

2. OFFICE OF OCCUPATIONAL SAFETY AND HEALTH

Secures compliance with the D.C. Industrial Safety Law and all regulations promulgated thereunder in order to promote the safety and health of wage earners. Administers, enforces and develops occupational safety and health standards, laws, rules and regulations. Holds hearings and makes decisions on variance requests on the review of any granted variances and renders decisions.

Plans, develops and administers the D.C. OSHA State plan and the involvement of the OSH Board for the representation input.

Advises and assists the Director regarding the administration and policies affecting the safety and health program.

3. OFFICE OF WORKER'S COMPENSATION

Plans, develops and coordinates the development of legislation to establish a District of Columbia Worker's Compensation Program. Will direct and maintain management of the Worker's Compensation Program.

V. TRANSFER OF FUNCTIONS

The following Boards and Councils with their powers, duties and functions are hereby transferred to the new Department of Employment Services, Office of the Director.

- A. The Wage-Hour Board set forth in Reorganization Plan No. 1 of 1978.
- B. The Occupational Safety and Health Board, set forth in Reorganization Plan No. 1 of 1978.
- C. The Unemployment Compensation Board, established by D.C. Law 2-129, Section 15-A, March 3, 1979, amendment to the D.C. Unemployment Compensation Law.
- D. The Manpower Services Planning Advisory Council, established by Commissioner's Order 74-84, dated May 24, 1974, with delegated authority set forth in Reorganization Plan No. 1 of 1978.
- E. The Apprenticeship Council, established under the provisions of D.C. Code 36-122 [32-1402], with delegated authority set forth in Reorganization Plan No. 1 of 1978. The Apprenticeship Council shall retain its powers, duties and functions under the Act approved May 21, 1946 (D.C. Code, Section 36-121 — 36-133 [32-1401 — 32-1413]), as amended.

VI. ESTABLISHMENTS

The following advisory bodies are hereby established in the Department of Employment Services, Office of the Director:

- A. An Advisory Committee on Ex-offenders Programs
- B. An Older Workers Advisory Committee
- C. An Advisory Committee on Improved Services to Women
- D. A Youth Advisory Committee
- E. A Handicapped Advisory Committee
- F. A Veterans Advisory Committee
- G. A Hispanic Advisory Committee
- H. A Job Service Improvement Program Council

These committees shall advise the Director of the special needs and concerns of targeted applicant groups and assess the adequacy of services provided these groups by the Department of Employment Services.

Each advisory committee shall consist approximately of twenty-four members, three from each Ward of the District of Columbia. The Director of Employment Services shall appoint committee chairpersons and members with counsel from the Mayor and City Council. Each committee shall include men and women and have equal representation of employees, employers and the general public.

VII. ABOLISHMENTS

- A. The Employment Security Board, established under Reorganization Plan No. 1 of 1978, is hereby abolished.
- B. The D.C. Department of Labor as currently organized is hereby abolished.

REORGANIZATION OF THE DISTRICT

VIII. FUNDS AND OTHER RESOURCES

There is hereby transferred to the Director, Department of Employment Services, all powers, duties and functions assigned or delegated to the Director of the former D.C. Department of Labor as of the date of this Reorganization Plan. All positions, property, records and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions assigned to the Director are hereby transferred to the Department of Employment Services.

Part B

REORGANIZATION PLAN NO. 3 OF 1980.

(Effective January 10, 1981).

Prepared by the Mayor and transmitted to the Council of the District of Columbia on October 14, 1980, pursuant to the provisions of Section 422 (12) of the District Charter.

EMPLOYEE, HEALTH, SAFETY AND COMPENSATION

PART A: SAFE AND HEALTHY WORK ENVIRONMENT FOR D.C. EMPLOYEES

I. ESTABLISHMENT

There is established in the Department of Employment Services (DOES) in the Office of Occupational Safety and Health a Division of Public Sector Safety.

II. PURPOSE

The Division of Public Sector Safety is established to administer the worker health and safety program for District of Columbia employees authorized by Title XX of the Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139) exclusive of Section 2007, to assure a safe working environment for District employees.

III. FUNCTIONS

(a) Develops, implements and manages comprehensive occupational safety and health programs for employees and general public users of District Government facilities, which include employee safety and health, fire safety, motor vehicle safety, safety of non-employee users of city facilities and services, contractor safety, and protection of District Government property. Provided, however, that nothing in this Part shall be construed as affecting the responsibility of the Fire Chief to enforce the D.C. Fire Code; and provided further, that responsibility for the licensing and inspection of vehicles shall continue in the Department of Transportation.

(b) Issues directives, manuals and guidelines for the operation of the safety and health programs consistent with applicable standards promulgated by the U.S. Department of Labor under the provisions of the Occupational Safety and Health Act, and other applicable standards.

(c) Monitors and evaluates adequacy and effectiveness of safety procedures and practices of District agencies through audits and inspections.

(d) Evaluates technological developments in the safety field (i.e., equipment, devices, and techniques to eliminate or minimize hazards) for possible application.

(e) Conducts promotional campaigns to stimulate worker interest in accident preventions and to train and motivate work supervisors, visitors, etc., in accident prevention concepts, practices and techniques.

(f) Establishes appropriate systems and procedures for accident reporting; maintains and analyzes records of all occupational accidents and illnesses occurring within agencies; studies safety problems and recommends to managers actions to correct undesirable conditions or unsafe practices.

IV. TRANSFERS

The powers, duties and functions authorized by Title XX of the Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139), exclusive of those in Section 2007 and delegated to the District of Columbia Office of Personnel by Mayor's Order No. 80-78, issued February 27, 1980, and presently administered in the Division of Compensation Programs are hereby transferred to the Department of Employment Services.

V. RESOURCES

All positions, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the functions assigned herein are hereby transferred to the Office of Occupational Safety and Health in the Department of Employment Services.

PART B: EMPLOYEE HEALTH SERVICES

I. ESTABLISHMENT

There is established in the Department of Human Services, in the Preventive Health Services Administration an Office of Employee Health Services.

II. PURPOSE

The Office of Employee Health Services is established to administer the provisions of Section 2007 of the Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139) [§ 1-620.07], to assure that District employees have access to appropriate medical and prevention health services.

III. FUNCTIONS

(a) Provides on-site emergency medical or first aid services to employees in

REORGANIZATION OF THE DISTRICT

major District Government facilities, either as a part of existing clinical services established through other programs or created specifically for the purpose within the limits of available resources.

(b) Provides a counseling program for troubled employees, offering initial review and referral for treatment as appropriate.

(c) Provides, through intra-District agreements with appropriate agencies, services which are associated with District Government employment, such as preemployment or periodic physical examinations, or fitness-for-duty examinations.

(d) Carries out government-wide prevention health programs to encourage awareness of good health practices on the part of District employees.

IV. TRANSFERS

The powers, duties and functions authorized by Section 2007 of the Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139) [§ 1-620.07] and delegated to the District of Columbia Office of Personnel by Mayor's Order No. 80-78, issued February 27, 1980 and presently administered by the Division of Compensation Programs, are hereby transferred to the Department of Human Services.

V. RESOURCES

All positions, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the function assigned herein are hereby transferred to the Preventive Services Administration of the Department of Human Services.

PART C: D.C. DISABILITY COMPENSATION

I. ESTABLISHMENT

There is established in the Department of Employment Services within the Office of Workers Compensation a Division of Public Sector Compensation.

II. PURPOSE

The Division of Public Sector Compensation is established to implement a disability compensation program for employees of the District of Columbia Government, as authorized by Title XXIII of the Comprehensive Merit Personnel Act (D.C. Law 2-139).

III. FUNCTIONS

(a) Establishes policies and procedures for operation of Title XXIII; promulgates and issues instructions, forms, and internal issuances and directives.

(b) Reviews and takes final action on claims brought under applicable statute or regulations including requests for reconsideration that follow hearings or other special considerations.

GOVERNMENT ORGANIZATION

(c) Maintains a master file and appropriate permanent records.

(d) Develops and maintains working agreements with the U.S. Public Health Service, designated physicians, the U.S. Office of Vocational Rehabilitation, and other public and private organizations as required.

(e) Monitors the adequacy and effectiveness of medical services under Title XXIII, and develops guidelines for the determination of disabilities and for professional fees.

(f) Provides technical assistance on D.C. Law 2-139, Title XXIII, to District Government agencies, labor organizations and others.

IV. TRANSFERS

The powers, duties and functions authorized by Title XXIII of the Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139) and delegated to the District of Columbia Office of Personnel by Mayor's Order No. 79-184, and presently administered in the Division of Compensation Programs, are hereby transferred to the Department of Employment Services.

V. RESOURCES

All positions, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the functions assigned herein are hereby transferred to the Office of Workers Compensation in the Department of Employment Services.

VI. EFFECTIVE DATE

This Plan shall become effective in accordance with Section 422 (12) of P.L. 93-198.

Subchapter V. 1982.

Part A

REORGANIZATION PLAN NO. 1 OF 1982.

(Effective July 3, 1982).

BUILDING AND ZONING REGULATION ADMINISTRATION

I. PURPOSE

The purpose of this reorganization plan is to transfer all functions associated with the administration and enforcement of the District of Columbia building and zoning codes from the Department of Housing and Community Development to the Department of Licenses, Investigations and Inspections.

REORGANIZATION OF THE DISTRICT

II. FUNCTIONS

The following functions are hereby transferred to the Director of the Department of Licenses, Investigations and Inspections:

(a) To administer and enforce the statutes, codes and regulations governing the construction, conversion, repair and alteration of buildings in the District of Columbia, including all appurtenances such as walls, fences and signs, and including all equipment installed in or on buildings or structures such as electrical, elevator, plumbing, refrigeration, gas, boiler and pressure vessel equipment;

(b) To administer and enforce the Energy Conservation Code of 1979, D.C. Law 3-39, as it amends the building, plumbing and electrical codes;

(c) To administer and enforce the Architectural Barriers Act of 1980, D.C. Law 3-118, as it amends the building, plumbing, electrical and elevator codes;

(d) To administer and enforce Sections 2, 5, and 6 of D.C. Law 1-64, the D.C. Applications Insurance Implementation Act, relating to permit requirements under the flood insurance program;

(e) To administer and enforce the zoning statutes, codes and regulations governing land use, the height, area and use of buildings, and subdivision of all private land and condominiums;

(f) To provide technical review and comment on applications filed with the Board of Zoning Adjustment; to maintain a register of approved non-conforming uses;

(g) To process applications to lease public space under the provisions of the Public Space Utilization Act, Public Law 90-598;

(h) To inspect buildings and facilities for compliance with building and zoning regulations in response to applications for certificates of occupancy and/or licensing requirements;

(i) To recommend to appropriate officials and agencies any amendments to the zoning regulations which would resolve problems or conflicts in administration;

(j) To recommend, in consultation with the Building Code Advisory Committee established by Commissioner's Order 72-173 and with appropriate officials and agencies, amendments to the building codes; to provide staff support to the Building Code Advisory Committee;

(k) To determine the compliance of new materials, appliances and systems with existing building codes, based on tests by nationally accepted testing laboratories, and issue certificates of approval as appropriate;

(l) To make available to the public information about building and zoning code requirements;

(m) To maintain master files and records of approved building plans and permits.

III. TRANSFERS

All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available

GOVERNMENT ORGANIZATION

relating to the duties and functions herein are hereby transferred to the Department of Licenses, Investigations and Inspections.

IV. ORGANIZATION

The Director of the Department of Licenses, Investigations and Inspections is authorized to organize the personnel and property transferred herein within any organizational unit of the Department as the Director deems appropriate.

V. EFFECTIVE DATE

The provisions of this Plan shall become effective pursuant to the requirements of Section 422 (12) of Public Law 93-128, or on a date thereafter to be determined by executive order of the Mayor.

Part B

REORGANIZATION PLAN NO. 2 OF 1982.

(Effective December 8, 1982).

OFFICE OF THE SURVEYOR

I. ESTABLISHMENT

There is established within the District of Columbia Department of Transportation the Office of the Surveyor, headed by the Surveyor, who shall perform the functions herein transferred or otherwise assigned. The Office of the Surveyor shall operate under the administrative direction of the Director and shall constitute an organizational unit of the Department of Transportation.

II. PURPOSE

The Office of the Surveyor is established to provide a legal office of record for the plats and subdivisions of all private property in the District of Columbia and all property belonging to the District of Columbia, with responsibility for the preservation of the records pertaining thereto and to perform such other functions as may be authorized or required by law or regulation or administrative direction. The Office of the Surveyor is further charged to conduct surveys and provide certified plats to any court, individual or firm as well as District or Federal agencies as may be ordered.

III. ORGANIZATION

The Director of the Department of Transportation is authorized to establish such organizational components within the Office of the Surveyor, and to place such office within any organizational division of the Department, as he deems appropriate.

IV. FUNCTIONS

The functions of the Office of the Surveyor contained in the following statutes, regulations and orders are hereby transferred:

1. The Act of March 2, 1893 (D.C. Code 1981 Ed., sec. 7-108 [9-103.02]), including but not limited to:

Filing and recording the permanent highway plan and amendments thereto.

2. The Act of March 3, 1901 (D.C. Code 1981 Ed., sec. 1-901 [1-1301] et seq.; former sec. 7-313) including but not limited to the following:

Keeping and preserving all maps, charts, surveys, books, records and papers relating to the land records of the District of Columbia.

Executing surveys for the District of Columbia and any order of survey made by any court or private individual, including the preparation of a true plat and certificate thereof.

Preparing necessary data and plats for subdivisions of property.

Preparing plats for use in condemnation of streets and alleys.

3. The Act of June 21, 1906 as amended (D.C. Code 1981 Ed., sec. 5-202 [6-402]), including but not limited to:

Preparing plats for use in condemnation proceedings concerning establishment of building lines.

4. The Act of January 30, 1925 (D.C. Code 1981 Ed., former sec. 7-124), including but not limited to:

Preparing street closing plats and recording of same.

5. The Act of December 15, 1932 (D.C. Code 1981 Ed., sec. 7-404 [9-202.12]), including but not limited to:

Recording of street and alley closing plats following the proceedings for their closings.

6. The Act of March 29, 1977 (D.C. Code 1981 Ed., sec. 45-1824 [42-1902.14]), including but not limited to:

Ascertaining the certification required by D.C. Code sec. 45-1824 [42-1902.14] prior to acceptance of condominium plats for recordation.

7. The Act of March 3, 1979 (D.C. Code 1981 Ed., sec. 1-929 [1-1329]), including but not limited to:

Establishing and enforcing standards and operating procedures for the performance of surveys by registered land surveyors who shall have been approved and permitted by the Office of the Surveyor to prepare and certify surveys and subdivision plats.

8. Commissioner's Order No. 67-651a, dated March 16, 1967, to wit:

Preparing all plats of subdivisions.

9. Furnishing information to the general public, and initiating and developing policies for consideration by the Mayor and the Council concerning the relationship between the Office of the Surveyor and the general public, Federal agencies, and other District Government agencies.

V. TRANSFER OF FUNCTIONS, FUNDS AND OTHER RESOURCES

There is hereby transferred to the Office of the Surveyor within the Department of Transportation all duties and functions assigned or delegated to

the existing Office of the Surveyor as of the date immediately prior to the effective date of this Reorganization Plan. All positions, personnel, property, records, and expended balances of appropriations, allocations, and other funds available or to be made available relating to the above functions are hereby transferred to such Office of the Surveyor within the Department of Transportation.

VI. EFFECTIVE DATE

The provisions of this Plan shall become effective pursuant to the requirements of Section 422(12) of Public Law 93-198, but no earlier than October 1, 1982.

MAYOR'S STATEMENT

The District of Columbia Office of the Surveyor was established by Act of Congress in 1901. The records and plats contained in the Office predate this by a century or more. Among its present responsibilities are:

- (1) To maintain the legal records of all plats and subdivisions of private and District Government property within the District,
- (2) To carry out surveys,
- (3) To verify that all building on private property conforms with established boundaries,
- (4) To accept and coordinate applications for closing streets and alleys, and
- (5) To receive and record plats of condominiums.

In recent years, builders and developers in the District as well as private homeowners have increasingly encountered delays in receiving services from this Office. My Transition Team initially reported to me on these problems; the Office of the City Administrator subsequently analyzed their causes, including understaffing, an out-of-date fee structure, an out-of-date records management system, the absence of a plane coordinate system in the District, and complexities involved in implementing D.C. Law 2-149 which allows registered private surveyors to certify privately prepared plats and surveys for permit purposes. Based on those findings, we initiated some immediate changes, such as reclassification of some positions and the expansion of the Surveyor's staff by 4 positions to provide an additional field party. Further improvements, however, depend on more fundamental organizational and operational changes.

The work of the Surveyor is a key ingredient in several regulatory functions of the District Government: building permits and inspections, public space use permits, transfers of real estate title and applications to open or close streets and alleys.

During 1981, the Office of the City Administrator and all the agencies related to regulatory functions, including the Office of the Surveyor, carried out an intensive analysis of these operations. Many administrative and personnel changes within individual offices are now under way to resolve widespread problems of backlogs and outdated procedures. A major reorganization plan to

REORGANIZATION OF THE DISTRICT

consolidate most regulatory functions in a single agency was drafted, and informally shared with Council members and private sector representatives. The reaction has been generally favorable, and steps toward that reorganization continued. However, we have on further examination concluded that because of the technical and engineering nature of the operations of the Office of the Surveyor it would be more appropriate to combine it with the Department of Transportation.

The Department of Transportation, within its Bureau of Design, Engineering and Research, has responsibility for the preparation of plans and specifications for construction and alteration of highway and bridge systems, for maintaining maps and records of proposed and approved grades, street widths and permanent street improvements, and for coordinating and maintaining maps of the location or relocation of underground utility or private installations in public space. To carry out these responsibilities, it directs field surveys, establishes grades, and maintains maps and records similar to those of the Surveyor. This Bureau also makes recommendations for approval or disapproval of proposed dedications and street and alley closings, and for approval or disapproval of applications for surface and subsurface space permits; these functions are also closely allied to functions of the Surveyor.

Both offices engage in surveying, perform geometric calculations, draw plats or plans, and make use of similar equipment. Because of these common technical elements and processes, the benefits of consolidation with a professional engineering office outweigh the benefits of consolidation with other regulatory functions. Exhibit A of the attached proposal details further the benefits to be derived from this reorganization.

This proposed consolidation of the Office of the Surveyor with the Department of Transportation will not alter the authorized functions of the Surveyor nor does it represent any change in present budget or policy priorities established in FY '82.

The reorganization will, however, provide an improved professional and organizational environment, more efficient utilization of resources, and a framework for further management improvements.

Subchapter VI. 1983.

Part A

REORGANIZATION PLAN NO. 1 OF 1983.

(Effective March 31, 1983).

Prepared by the Mayor and transmitted to the Council of the District of Columbia on January 3, 1983, pursuant to the provisions of Section 422 (12) of the District Charter.

DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

I. ESTABLISHMENT

There is hereby established, in the Executive Branch of the Government of the District of Columbia, under the supervision of a Director, a Department of Consumer and Regulatory Affairs. The Director of the existing Department of Licenses, Investigations and Inspections, or if confirmation of said Director by the Council is still pending, the Acting Director of the existing Department of Licenses, Investigations and Inspections, shall be the Director of the Department of Consumer and Regulatory Affairs upon the effective date of this plan (or the Acting Director if the confirmation process is still pending), and shall serve without the necessity of a new Council confirmation process.

II. PURPOSE

The mission of the Department of Consumer and Regulatory Affairs is to protect the health, safety and welfare of the citizens of the District of Columbia by regulation of business activities, land and building use, professional conduct and standards, rental housing and condominiums, health and social service care facilities, and the physical environment of the District of Columbia.

III. FUNCTIONS

A. The functions of the Department of Consumer and Regulatory Affairs shall be:

(1) Regulation of certain professional and occupational practices by individuals designated for licensing in the District, by means of registration, examination, approval of qualification, and complaint investigation.

(2) Maintenance of a fair and equitable insurance market for citizens of the District through financial surveillance of companies, licensing, rate regulation, and complaint investigation.

(3) Protection of the public from illegal, unfair or dangerous commercial practices by means of registration and licensing of businesses and/or individuals and assuring their compliance with all applicable legal requirements.

(4) Assurance that the physical environment and structure of all buildings in the District of Columbia meet all applicable regulations and codes for preservation or the use to which the space or structure is to be put; assurance that public and private land and structures meet adequate health, safety and environmental standards.

(5) Protection of the public through the regulation of rental housing, condominium and cooperative conversions and sales, and assurance of compliance with legislated housing standards and health, safety and sanitation standards for neighborhoods.

REORGANIZATION OF THE DISTRICT

(6) Assurance of public and private health and social services standards of safety and care for clients and consumers, by means of registration, licensing and certification of facilities and investigation of complaints.

B. The following functions are hereby transferred to the Director of the Department of Consumer and Regulatory Affairs:

(1) All of the functions related to the Department of Licenses, Investigations and Inspections, as established pursuant to Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Mayor's Order 78-42, dated February 17, 1978, and Reorganization Order No. 1 of 1982, dated July 6, 1982.

(2) All of the functions related to the Office of Consumer Protection, established pursuant to D.C. Code, sec. 28-3902 (2001 Ed.).

(3) All of the functions related to the Rental Accommodations Office, established pursuant to D.C. Code, sec. 45-1514 (1981 Ed.).

(4) All of the functions related to the Department of Insurance, established pursuant to Reorganization Order No. 43, dated June 23, 1953, as amended.

(5) All of the functions related to the Office of Licensing and Certification, as identified in Departmental Organization Order No. 50, dated October 1, 1982, (superseding Departmental Organization Order No. 5, dated February 21, 1980) of the Department of Human Services, established pursuant to Reorganization Plan No. 2 of 1979, dated June 20, 1980.

(6) All of the functions related to the Housing Regulation Division of the Neighborhood Improvement Administration as identified in Departmental Order No. 76-5, dated February 20, 1970, including the functional statement related to the Housing Regulation Division attached thereto, approved February 20, 1976, as amended by Departmental Order No. 76-5A, dated January 6, 1977, Departmental Order No. 76-5B, dated January 19, 1978, Departmental Order No. 76-5C, dated August 18, 1978, and the functions of the Neighborhood Improvement Administration contained in Departmental Organization Order No. 77-25, dated October 18, 1977, without restriction, notwithstanding the provisions of Part II of said Order, other than the function of approving rehabilitation loans and grants and deferred payment loans, of the Department of Housing and Community Development, established pursuant to Reorganization Plan No. 3 of 1975, dated March 8, 1975.

(7) All of the functions related to condominium and cooperative conversion and sales conducted by the Department of Housing and Community Development including the functions identified in Departmental Order No. 76-5, dated February 20, 1970, and Departmental Order No. 79-5, dated March 9, 1979, of the Department of Housing and Community Development, established pursuant to Reorganization Plan No. 3 of 1975, dated March 8, 1975.

(8) All of the functions of the Office of Policy and Planning related to historic preservation, as identified in the functional statement dated March 24, 1976, attached to Departmental Order No. 76-13, dated April 26, 1976, of the Department of Housing and Community Development,

GOVERNMENT ORGANIZATION

established pursuant to Reorganization Plan No. 3 of 1975, dated March 8, 1975.

(9) All of the functions related to the Bureau of Environmental Health of the Office of Environmental Standards and Quality Assurance, as identified in Departmental Order No. 10-12-10, dated August 25, 1982, of the Department of Environmental Services, established pursuant to Commissioner's Order No. 71-255, dated July 27, 1971.

(10) All of the functions related to the Bureau of Community Hygiene as identified in Departmental Order No. 10-12-09 (Revised), dated July 21, 1976, of the Department of Environmental Services, established pursuant to Commissioner's Order No. 71-255, dated July 27, 1971.

(11) All of the functions related to flooding, erosion and sediment control, as identified in Mayor's Order No. 76-139, dated July 23, 1976, as amended by Mayor's Order No. 76-220, dated November 3, 1976, and Departmental Order No. 10-12-30 (Revised), dated March 3, 1982, of the Department of Environmental Services established pursuant to Commissioner's Order No. 71-255, dated July 27, 1971.

(12) All of the functions related to partnerships and corporations of the Office of the Recorder of Deeds, identified in Paragraphs B, D, E, and G of Part I and, Paragraphs C and D of Part IV of Organization Order No. 101 — Replacement, Commissioners' Order 63-197, dated January 24, 1963, as amended.

IV. TRANSFERS

All positions, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the duties and functions assigned herein, are hereby transferred to the Department of Consumer and Regulatory Affairs.

V. ORGANIZATION

The Director of the Department of Consumer and Regulatory Affairs is authorized to organize the personnel and property transferred herein within any organizational unit of the Department as the Director deems appropriate.

VI. ABOLISHMENT

The following agencies of the District of Columbia government are hereby abolished:

- The Department of Licenses, Investigations and Inspections
- The Rental Accommodations Office
- The Department of Insurance
- The Office of Consumer Protection

VII. EFFECTIVE DATE

This Reorganization Plan No. 1 of 1983 shall become effective in accordance with Section 422 (12) of Public Law 93-198, or on a date thereafter to be designated pursuant to executive order of the Mayor.

Part B

REORGANIZATION PLAN NO. 2 OF 1983.

(Effective March 31, 1983).

CONSOLIDATION OF MOTOR VEHICLE REGISTRATION PROCESS IN THE DEPARTMENT OF TRANSPORTATION

I. PURPOSE

The purpose of the reorganization is to consolidate the motor vehicle registration process, exclusive of cash collections, within the Department of Transportation.

II. FUNCTIONS

1) Those duties and functions of the Recorder of Deeds of the District of Columbia relating to the recordation of liens on motor vehicles and trailers, pursuant to "An Act to provide for the recording and releasing of liens by entries on certificates of titles for motor vehicles and trailers," as amended (D.C. Code, sec. 50-1201 et seq., 2001 Ed.), exclusive of the collection of fees for the same, delegated pursuant to paragraph A of Part IV of Organization Order No. 101 — Replacement, Commissioners' Order No. 63-197, dated January 24, 1963, as amended, are hereby transferred to the Department of Transportation.

2) The duties and functions of the Recorder of Deeds of the District of Columbia relating to the collection of fees for the recordation of liens on motor vehicles and trailers, delegated pursuant to paragraph A of Part IV of Organization Order No. 101; Replacement, Commissioners' Order No. 63-197, dated January 24, 1963, as amended, are hereby transferred to the Office of the D.C. Treasurer.

3) The duties and functions of the Department of Finance and Revenue relating to the solicitation of information from every applicant for a certificate of title, the determination of the fair market value of a motor vehicle or trailer, and the imposition of an excise tax for the issuance of every original certificate of title for a motor vehicle or trailer, pursuant to the District of Columbia Traffic Act, 1925, (D.C. Code, sec. 50-2201.03(j)(1) and (2), 2001 Ed.), delegated pursuant to Commissioners' Order No. 69-96, dated March 7, 1969, as amended, are hereby transferred to the Department of Transportation.

III. TRANSFERS

All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the duties and functions in parts II(1) and (3) above are hereby

transferred to the Department of Transportation. Those relating to part II(2) above are hereby transferred to the Office of the D.C. Treasurer.

IV. ORGANIZATION

The Director of the Department of Transportation is authorized to organize the personnel and property transferred herein within any organizational unit of the Department as the Director deems appropriate.

V. EFFECTIVE DATE

The provisions of this Plan shall become effective pursuant to the requirement of Section 422(12) of Public Law 93-198, or on a date thereafter to be designated pursuant to an Executive Order of the Mayor.

Part C

REORGANIZATION PLAN NO. 3 OF 1983.

(Effective March 31, 1983).

Prepared by the Mayor and transmitted to the Council of the District of Columbia on January 3, 1983, pursuant to the provisions of Section 422(12) of the District Charter.

I. ESTABLISHMENT

There is hereby established in the District of Columbia Department of Finance and Revenue, under the supervision and the control of the Director thereof, a Recorder of Deeds Division. The Recorder of Deeds Division hereby established, and the functions and personnel assigned thereto shall constitute an organizational unit of the Department of Finance and Revenue.

II. PURPOSE

The Recorder of Deeds Division is established in the Department of Finance and Revenue, under the supervision and control of the Director, for the purpose of centralization and automation of functions in order to streamline District government operations.

III. TRANSFER OF FUNCTIONS

The following powers, duties, and functions are hereby transferred to the Director of the Department of Finance and Revenue, who is authorized to redelegate such powers, duties and functions as he/she may deem necessary.

1. Those duties and functions of the Recorder of Deeds set forth in paragraphs A, B, E, F, G, H, I and J of Part IV of Organization Order No. 101 — Replacement, Commissioners' Order No. 63-197, January 24, 1963, as amended; except, those functions specified in paragraph A relating to

motor vehicle liens and those specified in paragraphs C and D thereof. The functions thus transferred shall include the following:

(A) Serve as an office of record for the recording, filing and handling of all public records in the form of deeds, deeds of trust, chattel mortgages, contracts and other instruments in writing (other than motor vehicle liens) affecting a right, title or interest in real and personal property in the District of Columbia.

(B) Maintain an index to real property in the District of Columbia through which the recorded history of ownership of such property is made available to the public.

(C) File, without charge, service discharge papers for veterans of the armed forces.

(D) Recommend to the Mayor and draft new laws, regulations and amendments to existing laws and regulations and recommend increases and decreases in fees pertaining to the functions of the Division.

(E) Provide photostatic certified copies of legal documents of record for use in various Courts of law in the District of Columbia, and the several States, and foreign countries.

(F) Collect all fees, license taxes, penalties and other charges as prescribed in or under the authority of the applicable legislation, except the collection of fees for the recordation of motor vehicle liens, and deposit same with the D.C. Treasurer.

(G) Serve as an office of record for the receipt, filing, indexing, mailing and handling of notice of foreclosure sale received pursuant to Public Law 90-566 (October 12, 1968, 82 Stat. 1002, D.C. Code Section 45-715 [42-815.01]).

2. Those powers, duties, and functions of the Recorder of Deeds, acting as agent of the Mayor, in accordance with the Real Estate Deed Recordation Tax Act as amended (March 2, 1962, 76 Stat. 11, Pub. L. 87-408, Title III, D.C. Code 45-921 [42-1101] et seq.), pursuant to paragraph C of Part I of Organization Order No. 101 — Replacement, as corrected and amended by Commissioners' Order No. 63-703, March 3, 1963. The functions thus transferred shall include the following:

(A) Receive and examine all returns required to be filed with any deed submitted for recordation.

(B) Maintain such staff, records, and accounts as may be required or necessary in connection with the recordation of deeds and the receiving and accounting for taxes applicable to such deeds.

(C) Receive all taxes applicable to deeds presented and accepted for recordation.

(D) Reject for recordation, when applicable, any deed for which a return is required to be filed if such deed is not accompanied by a return in proper form, executed by all the parties to the deed.

(E) Reject for recordation, when applicable, any deed for which a tax is required to be paid, if the full amount of the applicable tax is not tendered with the deed.

GOVERNMENT ORGANIZATION

(F) Check returns for arithmetical accuracy in the computation of the amount of tax due. Where an arithmetical computation, as made on a return, is erroneous, the Director may, in his discretion, recompute the tax and, upon payment of the tax as recomputed, accept for recordation the deed to which the return applies, noting on the return the action taken.

(G) Account for and transmit to the D.C. Treasurer all taxes collected upon recordation of deeds.

(H) Administer oaths and affirmations to parties to deeds when required in connection with a return or other document presented to him/her for purposes of recordation of a deed.

3. All of the functions as agent of the Mayor, described in section 13 of the Act approved July 5, 1962 (Pub. L. 87-523; 76 Stat. 135) delegated pursuant to paragraph F of Part I of Organization Order No. 101 — Replacement, Commissioners' Order No. 63-197, January 24, 1963, as amended.

4. Such other functions not specified herein, which have been delegated to or vested in the Recorder of Deeds as of the effective date of this plan.

IV. ORGANIZATION

The Director of the Department of Finance and Revenue in the performance of the powers, duties, and functions herein assigned shall have the power to establish such organizational components as are warranted within the Recorder of Deeds Division herein established and to realign and place such components or parts thereof within any organizational division of the Department as he/she may deem appropriate in the interest of efficiency and good administration.

V. TRANSFER OF FUNDS AND OTHER RESOURCES

All positions, including the positions of the D.C. Recorder of Deeds, and Deputies thereof, property, records, and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the duties and functions assigned herein are hereby transferred to the Department of Finance and Revenue.

VI. ABOLITION OF EXISTING OFFICE

The existing Office of the Recorder of Deeds is hereby abolished.

VII. EFFECTIVE DATE

The provisions of this Plan shall become effective pursuant to the requirements of Section 422(12) of Public Law 93-198, or on a date thereafter to be designated pursuant to an executive order of the Mayor.

REORGANIZATION OF THE DISTRICT

Part D

REORGANIZATION PLAN NO. 4 OF 1983.

(Effective March 1, 1984).

Prepared by the Mayor and transmitted to the Council of the District of Columbia on December 1, 1983, pursuant to the provisions of Section 422(12) of the District Charter.

DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC WORKS

I. ESTABLISHMENT

There is hereby established, in the Executive Branch of the Government of the District of Columbia, under the supervision of a Director, a Department of Public Works (hereinafter Department). The Director shall have full authority over the Department and all functions and personnel assigned thereto, including the power to redelegate to other employees and officials of the Department such powers and authority as in the Director's judgment are warranted in the interest of efficiency and sound administration.

II. PURPOSE

The mission of the Department of Public Works is to plan, provide and maintain the District's physical infrastructure. For purposes of this reorganization plan, the "District's physical infrastructure" shall mean those public physical structures, facilities and services which involve District Government functions essential to the quality of the District of Columbia's environment and transportation system and for which capital monies have been or will be expended.

III. FUNCTIONS

The functions to be assigned to the major organizational components of the Department shall be:

A. To develop policies and programs relating to mass transit including supporting the Washington Metropolitan Area Transit Authority (hereinafter WMATA) Board members, acting as liaison between WMATA and the District Government, administering the school transit subsidy and evaluating transit service and policy.

B. To develop policies and plans necessary to carry out the Department's mission including policy development, planning, capital programming, site acquisition, zoning review and regional liaison.

C. To ensure an adequate automated information support system to the Department's operations including systems operation; systems develop-

ment; systems analysis; information equipment for telecommunications, word processing and copiers; and records management.

D. To provide basic support services for the functions required to be performed by the Department including personnel; materiel management involving procurement of general supplies and services (to the extent authorized by the Mayor), inventory, warehousing, supply and fuel distribution; and management/operations analysis.

E. To manage the finances of the Department in the areas of budget, finance, accounting, audit and control, payroll, and financial analysis.

F. To plan and provide for the maintenance of the public space in a safe, clean and healthful condition, including the maintenance and inspection of the public right-of-way and trees, coordination of the District's snow program and the ensurance of the proper and sanitary collection and disposal of refuse in an environmentally sound manner.

G. To ensure the provision, repair and maintenance of all District of Columbia non-emergency vehicles, including the control over the acquisition and inventory of same.

H. To plan, program, operate, manage, control and maintain public transportation facilities, systems and related programs to ensure the safe and efficient movement of people and goods in the District including traffic management; parking management and enforcement; vehicle and driver licensing, registration and control.

I. To the extent authorized by the Mayor, plan, manage, and contract for the design, engineering and construction of the District's infrastructure including its solid waste, water and sewer facilities, streets, bridges, and buildings.

J. To operate and maintain District facilities in proper condition through the application of standards, the control of building systems and the provision of repair and improvement services. Concurrent authority for building repairs and improvement functions is included in Reorganization Plan No. 5 of 1983 permitting a future transfer of all such functions and related resources and funds to the Department of Administrative Services.

K. To provide complete water and sewer utility systems including the provision of an adequate and potable water supply; water distribution, measurement and billing; the collection and treatment of sewage; and the construction and maintenance of all related facilities on a cost recovery basis.

L. To identify financial resources to be applied to public works programs, both operating and capital, and develop a plan for allocating the resources among public works programs.

IV. TRANSFER OF FUNCTIONS

A. All of the functions of the Department of Transportation as set forth in Reorganization Plan No. 2 of 1975, dated July 25, 1975, shall be transferred to the Department, with the exception of the provision of the shuttle bus service

REORGANIZATION OF THE DISTRICT

established by Commissioner's Order No. 72-11, dated January 13, 1972, which shall be transferred to the Department of Administrative Services on the operational date established by the Department of Administrative Services Reorganization Plan approved by the Council.

B. The functions of the Department of Consumer and Regulatory Affairs related to the License Inspection Branch of the Business Inspection Division of the Business Regulation Administration as identified in Solid Waste Disposal Regulations 71-21, section 8-3:607 and 8-3:610, established pursuant to Reorganization Plan No. 1 of 1983, dated March 31, 1983, shall be transferred to the Department.

C. The functions of the Department of Consumer and Regulatory Affairs related to the Vector Control Branch and Neighborhood Improvement Branch of the Environmental Control Division, established pursuant to Reorganization Plan No. 1 of 1983, dated March 31, 1983, shall be transferred to the Department.

D. The functions of the Department of General Services related to the Bureau of Design and Engineering, Bureau of Construction Management, Bureau of Repairs and Improvements, the building engineer and mechanics' functions of the Bureau of Building Management and those capital functions of the Office of Programming, Management and Budget, established pursuant to Organization Order No. 69-96, dated March 7, 1969, shall be transferred to the Department. All other functions of the Department of General Services, established pursuant to Organization Order No. 69-96, shall be transferred to the Department of Administrative Services on the operational date established by the approved reorganization plan for that Department.

E. The functions of the Department of Environmental Services as set forth in Commissioner's Order No. 71-255, dated July 27, 1971, shall be transferred to the Department, with the exception of the Office of Environmental Standards and Quality Assurance which shall be transferred to the Department of Consumer and Regulatory Affairs on the effective date of this Reorganization Plan.

V. DELEGATION AND REDELEGATION OF AUTHORITY

Except as provided in Section IV of this Plan, the Director of the Department of Public Works is the successor to all authority delegated to the Director of the Department of Transportation, Director of the Department of Environmental Services, and the Director of the Department of General Services, and is authorized to act, either personally or through a designated representative, as a member of any committees, commissions, boards, or other bodies which presently include as a member the Director of the Department of Transportation, the Director of the Department of Environmental Services, or the Director of the Department of General Services.

VI. OTHER TRANSFERS

All positions, personnel, property, records and unexpended balances of appropriations, allocations, and other funds available or to be made available

relating to the functions set forth under Section IV above (other than those resources and funds to be transferred to the Department of Consumer and Regulatory Affairs and the Department of Administrative Services) are hereby transferred to the Director of the Department of Public Works.

VII. REORGANIZATION

The Director of the Department of Public Works, in the performance of his or her duties and functions, is authorized to establish such organizational components within the Department with such specified functions as he or she deems appropriate.

VIII. RESCISSION

A. All orders and parts of orders in conflict with any of the provisions of this plan are, to the extent of such conflict, hereby repealed, except that any municipal regulations adopted or promulgated by virtue of the authority granted by such orders, shall remain in force until properly revised, amended or rescinded.

B. The Department of Transportation and the Department of Environmental Services are abolished as of the effective date established for this plan pursuant to Section IX below. The positions of Director, Department of Transportation and Director, Department of Environmental Services, are also abolished on the same date.

IX. EFFECTIVE DATE

The provisions of this plan shall become effective pursuant to the promulgation of an executive order of the Mayor establishing the same no later than thirty (30) calendar days after this plan has been approved in accordance with the requirements of Section 422(12) of Public Law 93-198.

Part E

REORGANIZATION PLAN NO. 5 OF 1983.

(Effective March 1, 1984).

Prepared by the Mayor and transmitted to the Council of the District of Columbia on November 30, 1983, pursuant to the provisions of Section 422 (12) of the Charter of the District of Columbia.

DISTRICT OF COLUMBIA DEPARTMENT OF ADMINISTRATIVE SERVICES

I. ESTABLISHMENT

There is hereby established, in the Executive Branch of the Government of the District of Columbia, a Department of Administrative Services under the

supervision of a Director, who shall carry out the functions and authorities transferred or otherwise assigned to the Department, and who may re-delegate those functions and authorities.

II. PURPOSE

The mission of the Department of Administrative Services is to issue regulations for the procurement, management and disposal of D.C. Government property, both real and personal, the procurement of contract services and the management of information resources, including automated systems, printing and copying; to provide a means for the Mayor to administer certain contracting and procurement authority vested in him by law; and, within the authority delegated by the Mayor, to provide a variety of administrative support services to D.C. Government agencies.

III. FUNCTIONS

The functions of the Department of Administrative Services shall be:

(A) To issue regulations for procurement of real estate, goods and services by D.C. Government agencies; for materiel handling including the warehousing, distribution and replacement of accountable and consumable property; for the disposal of D.C. Government property; and for employee travel, uniforms and allowances.

(B) To issue the District of Columbia procurement regulations for the establishment of policies and procedures concerning procurement and contracting, and for material handling, consistent with law.

(C) To acquire real property for D.C. Government use, by purchase or lease, and dispose of surplus real property; and to exercise other delegated procurement and property disposal authority delegated by the Mayor.

(D) To issue regulations for the requisition and use of information management resources by D.C. Government agencies, including hardware, software and contract services in the areas of data and word processing, telecommunications, printing and copying; review and approve all agency proposals concurred in by a Deputy Mayor for acquisition of such resources and services, and recommend approval to the City Administrator; coordinate the development of information management plans, standards, systems and procedures; and undertake projects to achieve the compatibility of information management methods and equipment throughout the D.C. Government.

(E) To issue regulations and standards for utilization by agencies of space in buildings and adjacent areas owned and leased by the D.C. Government; develop a D.C. Government wide plan for the use of such space by agencies; maintain inventory records for and control of such space and its usage; assist agencies to implement the space-use plans; and administer the employee parking program.

(F) To issue regulations and standards for, and to provide building services for D.C. Government owned and occupied buildings, including custodial services, security energy conservation, utilities management,

maintenance inspection and planning, and repairs and non-structural improvements.

(G) To issue regulations and standards for, and to provide other administrative services to D.C. Government agencies, including, but not limited to mail, telephone, shuttle bus, central motor pool, and those warehousing functions as may be delegated by the Mayor.

IV. TRANSFER OF FUNCTIONS

The following functions are hereby transferred to the Director of the Department of Administrative Services:

(A) All of the functions assigned, and authorities delegated to the Department of General Services and/or the Director thereof by section 31-301 et seq. of the D.C. Code (1981 Ed.), Order of the Commissioner No. 69-96 (March 7, 1969), Order of the Commissioner No. 69-116 (March 17, 1969), Mayor's Order 75-261 (December 15, 1975), as amended, and all other laws, regulations and orders; except the functions of the Department of General Services which have been transferred to the Department of Public Works pursuant to Reorganization Plan No. 4 of 1983. Concurrent authority for building repairs and improvement functions is included in Reorganization Plan No. 4 of 1983, permitting a future transfer of all such functions and related resources and funds from the Department of Public Works to the Department of Administrative Services.

(B) All of the functions assigned and authorities delegated for the motor vehicle pool operation of the Department of Highways and Traffic by Order of the Commissioner No. 72-11 (January 13, 1972), and subsequently transferred to the Department of Transportation.

(C) All of the functions for District of Columbia Government-wide planning and issuance of regulations for computer and other information resource management, and authority to approve acquisition of hardware, software and contract services for information management; all as vested in the Mayor by Public Law 93-198 and other applicable laws. The functions of operating information processing systems shall continue to be carried out by agencies authorized by the Mayor to operate such systems.

(D) All of the functions for issuing regulations for employee travel and the provision by agencies of employee uniforms and allowances as vested in the Mayor by Public Law 93-198 and other applicable laws.

V. OTHER TRANSFERS

All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the functions set forth under Section IV above, are hereby transferred to the Department of Administrative Services.

VI. ORGANIZATION

The Director of the Department of Administrative Services is authorized to

REORGANIZATION OF THE DISTRICT

organize the personnel and property transferred herein within any organizational unit of the Department as the Director deems appropriate.

VII. ABOLISHMENT

The following agency of the District of Columbia Government is hereby abolished on the effective date established for this plan pursuant to Section VIII below:

Department of General Services

The position of Director of the Department of General Services is also abolished on the same date.

VIII. EFFECTIVE DATE

This Reorganization Plan No. 5 of 1983 shall become effective pursuant to the promulgation of an executive order of the Mayor establishing the same no later than thirty (30) calendar days after this plan has been approved in accordance with the requirements of Section 422(12) of Public Law 93-198.

Subchapter VII. 1986.

Part A

REORGANIZATION PLAN NO. 2 OF 1986.

(Effective February 4, 1987).

Prepared by the Mayor and transmitted to the Council of the District of Columbia on November 3, 1986, pursuant to the provisions of Section 422(12) of the District Charter.

DISTRICT OF COLUMBIA BOARD OF PAROLE

I. TRANSFER

The Office of Parole Supervision is hereby transferred from the District of Columbia Department of Corrections to the District of Columbia Board of Parole, to be under the supervision of the Chair of the Board. The Chair shall carry out the functions, duties and authorities transferred to the Board.

II. PURPOSE

The mission of the Board of Parole is to determine if and when it is appropriate to grant parole to an offender who has served the minimum term in prison ordered by the court. In granting parole, the Board determines 1) the terms and conditions of such parole; 2) the standards of supervision for parolees or mandatory release; and, 3) if and when to terminate a parole or

mandatory release, as well as whether to modify the terms and conditions thereof.

III. FUNCTION

The function transferred to the Board of Parole:

To establish policy and standards, and to administer the parole supervision function.

IV. TRANSFER OF FUNCTIONS

All functions and authority of the Department of Corrections related to parole supervision, established pursuant to Commissioner's Order No. 7, dated December 26, 1967, as amended, are hereby transferred to the Board of Parole.

All Department of Corrections positions, personnel, property, records and unexpended balance of appropriations, allocations, and other funds available or to be made available relating to the duties and functions assigned herein, are hereby transferred to the Board of Parole. These funds are to be used only for the purposes for which the appropriation or allocation was originally made. All authority for parole supervision services previously authorized or delegated to the Department of Corrections is hereby transferred to the Board of Parole.

V. RESCISSION

All orders and parts of orders in conflict with any of the provisions of this plan are, to the extent of such conflict, hereby repealed, except that any municipal regulations adopted or promulgated by virtue of the authority granted by such orders, shall remain in force until properly revised, amended or rescinded.

No agency of the District of Columbia government is abolished as a consequence of this reorganization. An amendment to Organization Order No. 7 shall be made so as to exclude parole supervision from the functions of the Department of Corrections.

VI. EFFECTIVE DATE

This Reorganization Plan No. 2 of 1986 shall become effective in accordance with Section 422(12) of Public Law 93-198, or on a date thereafter to be designated pursuant to Executive Order of the Mayor.

Part B

REORGANIZATION PLAN NO. 3 OF 1986.

(Effective January 3, 1987).

Prepared by the Mayor and transmitted to the Council of the District of Columbia on September 1, 1986, pursuant to the provisions of Section 422(12)

of the District Charter and Public Law 98-621 of November 8, 1984 (24 U.S.C. § 225 et seq.), the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act.

DISTRICT OF COLUMBIA DEPARTMENT OF HUMAN SERVICES

I. ESTABLISHMENT

There is hereby established, in the Executive Branch of the Government of the District of Columbia, under the supervision of the Director, a Department of Human Services (hereafter "Department"). The Director shall have full authority over the Department and all functions and personnel assigned thereto, including the power to redelegate to other employees and officials of the Department such powers and authority as in the Director's judgment are warranted in the interests of efficiency and sound administration.

II. PURPOSE

The mission of the Department of Human Services is to assure the development and implementation of public health and social service policy in response to the needs of individuals and families in the District of Columbia; and to promote the health, mental health, and well-being of District residents through the delivery of high-quality and equitably-distributed services and income assistance programs.

III. FUNCTIONS

The functions to be assigned to the major organizational components of the Department shall be:

The Director, through the organizational components of the Department, shall be responsible for the following functions:

A. Policy-making and the development and implementation of long- and short-range plans;

B. The development and utilization of an automated information support system for the Department;

C. Providing basic support services throughout the Department;

D. Managing the finances for the Department, and preparing and defending the budget;

E. Directing the preparation and support of the legislative agenda for the Department;

F. Serving as the single state agency for federal categorical and block grants;

G. Providing high-quality community-based and inpatient preventive, diagnostic, therapeutic and rehabilitative mental health services;

H. Providing psychiatric evaluation and treatment services to adult and juvenile forensic clients and inpatient, day treatment, or detention settings;

I. Providing psychiatric evaluation and treatment services to adult and juvenile clients on an acute-care or long-term basis in an inpatient setting;

J. Providing mandates services, technical assistance and counseling regarding veterans' benefits and other assistance under DHS and affiliated programs administered under provisions of public laws;

K. Medically investigating and reporting on known or suspected homicides, suicides, medically unattended or accidental deaths, and deaths which might threaten public health and safety;

L. Identifying and treating drug and substance abusers with the goal of rehabilitation, and working to prevent substance abuse in the District of Columbia;

M. Administering comprehensive community-based medical screening and care to infants, children, adults, and the elderly in clinical, school, or home settings;

N. Providing long-term skilled and intermediate-level inpatient health care;

O. Providing health services to homebound adult patients who show potential for rehabilitation as well as to patients with long-term chronic illnesses who need help to maintain themselves at home;

P. Providing a wide range of identification and immunization services with the goal of preventing, insofar as possible, toxic, contagious, or injurious conditions;

Q. Analyzing the needs of homeless persons, coordinating and delivering comprehensive shelter, medical, and social services to the homeless;

R. Aiding in developing and sustaining independent living by the provision of social services, including emergency assistance, to adults and the elderly;

S. Providing a range of protective and child welfare services to children and youth;

T. Determining eligibility of clients for the range of available federal and District-funded income assistance programs;

U. Providing a range of habilitative, training, educational, and residential services, as needed, to retarded and developmentally disabled District residents and their families;

V. Determining the degree of disability of physically, mentally, or emotionally disabled or handicapped residents, and working to assist such clients to achieve self-sufficiency through training and auxiliary services; and

W. Developing and administering a citywide system of services for delinquency prevention and control, including supervision, short-term detention as needed, and educational, health, psychological and social services for delinquent and pre-delinquent youth.

IV. DELEGATION AND REDELEGATION OF AUTHORITY

The Director of the Department of Human Services is the successor to the

REORGANIZATION OF THE DISTRICT

authority delegated to him or her as Director of the previously-existing Department, and is authorized to act, either personally or through a designated representative, as a member of any committees, commissions, boards, interstate compacts, or other bodies which presently include as a member the Director of the Department of Human Services or the Superintendent of Saint Elizabeths Hospital; or as a participant in any interagency agreement to which the Director or the Superintendent has been a party.

V. OTHER TRANSFERS

All property other than real property and all records and personal property used in conjunction with the real property and buildings transferred to the District by Section 8 of P.L. 98-621 (24 U.S.C. § 225f), are hereby transferred to the Department of Human Services for use in providing mental health and other services as of the effective date specified in the law.

The Department shall have the use of real property and buildings on the East side of the Saint Elizabeths campus with the exception of such real property and buildings as are retained by the federal government under P.L. 98-621; and shall also have the use of certain real property and buildings on the West side, on an interim or long-term basis, as determined by the Mayor.

The Department is also the successor to all other positions, property, allocations and other funds available or to be made available relating to the powers, duties, and functions of the preexisting Department of Human Services.

VI. REORGANIZATION

The Director of the Department of Human Services, in the performance of his or her duties and functions, is authorized to establish such organizational components within the Department with such specified functions as he or she deems appropriate. Until such establishment, existing Orders establishing the components of the preexisting Department remain in force, where they do not conflict with this Plan.

VII. RECISSION

All orders and parts of orders in conflict with any of the provisions of this Plan are, to the extent of such conflict, hereby repealed, except that any municipal regulations adopted or promulgated by virtue of the authority granted by such orders, shall remain in force until properly revised, amended, or rescinded.

VIII. EFFECTIVE DATE

The provisions of this Plan shall become effective pursuant to the promulgation of an executive order of the Mayor no later than thirty (30) calendar days after this Plan has been approved, in accordance with the requirements of Section 422(12) of Public Law 93-198.

Subchapter VIII. 1987.

Part A

REORGANIZATION PLAN NO. 1 OF 1987.

(Effective December 15, 1987).

Prepared by the Mayor and transmitted to the Council of the District of Columbia, pursuant to the provisions of Section 422(12) of the District Charter.

DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC AND ASSISTED HOUSING

I. ESTABLISHMENT

There is hereby established in the Executive Branch of the Government of the District of Columbia, the "Department of Public and Assisted Housing" under the supervision of a Director who shall be appointed by the Mayor to a position in the Executive Service pursuant to Title X of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139, effective March 3, 1979 (D.C. Code Sections 1-611.1 to 1-611.2), and subject to the advice and consent of the Council, as provided in Section 2 of the Confirmation Act of 1978, D.C. Law 2-142, effective March 3, 1979 (D.C. Code Section 1-633.7). The Deputy Director for Public Housing of the existing Department of Housing and Community Development shall be the Acting Director pending confirmation by the Council.

II. PURPOSE

The mission of the Department of Public and Assisted Housing is to ensure the provision of safe, decent and sanitary low-cost public and subsidized housing to those residents of the District of Columbia who are eligible for such housing based upon eligibility criteria or guidelines established under my applicable federal or local laws or regulations.

III. FUNCTIONS

A. The functions of the Department of Public and Assisted Housing shall be to:

(1) Provide the Mayor information and advice on matters pertaining to public and subsidized housing plans, programs, and activities within the District of Columbia.

(2) Identify the District's public and subsidized housing needs, formulate and recommend public and subsidized housing development policy and accomplish the planning, promotion, coordination and execution of plans, projects and activities to meet those needs.

REORGANIZATION OF THE DISTRICT

(3) Develop annual and longer-term public and subsidized housing priorities and goals and budgets.

(4) Identify and develop new public and subsidized housing resources.

(5) Operate, manage and maintain the District's public housing stock.

(6) Administer and operate federal subsidy programs established pursuant to Section 8 of the United States Housing Act of 1937, as amended.

(7) Administer and operate the Tenant Assistance Program established pursuant to Title III of the District of Columbia Rental Housing Act of 1985, as amended.

(8) Develop and coordinate the delivery of tenant programs and services including educational training programs, day care services, job-training and employment opportunities, homeownership; health care and other social services for families and individuals residing in public or subsidized housing.

(9) Ensure that plans, programs and activities are in compliance with all applicable federal and local laws and regulations and coordinated with appropriate federal and local agencies.

B. The following functions are hereby transferred to the Department of Public and Assisted Housing:

(1) All of the functions related to the powers and duties of the National Capital Housing Authority established pursuant to the District of Columbia Alley Dwelling Act, as amended (D.C. Code 5-101 through 5-116), and Presidential Executive Order 6868 of October 9, 1934, as amended and transferred to the Department of Housing and Community Development (DHCD) pursuant to Reorganization Order No. 3 of 1975 (21 DCR 2793; effective July 3, 1975), including the functions identified in the following Organizational Orders of the Department of Housing and Community Development:

(a) All of the functions related to the Public Housing Modernization Administration as identified in DHCD Organizational Order No. 85-8, dated November 19, 1985, including the functional statement related to the Public Housing Modernization Administration, attached thereto, approved November 19, 1985.

(b) All of the functions related to the Property Management Administration as identified in DHCD Organizational Order No. 84-8, dated August 10, 1984, including the functional statement related to the Property Management Administration attached thereto, approved August 10, 1984, as amended by DHCD Organizational Order No. 86-3, related to the establishment of the Rent Collection Division, Property Management Administration, dated September 18, 1986, including the functional statement attached thereto and approved September 18, 1986.

(c) The functions relating to the acquisition, development and production of new public housing units; the development of public housing homeownership opportunities for low-income families, and the marketing and disposition of existing public housing units, as identified in DHCD Organizational Order No. 86-1, dated March 27,

1986, relating to the Housing Production and Disposition Division, including the functional statement dated March 27, 1986, except for the functions relating to the sale for private development of residential properties identified in the Marketing and Disposition Branch of the Housing Production and Disposition Division.

(2) All of the functions of the Department of Housing and Community Development related to the Tenant Assistance Program established pursuant to D.C. Law 6-10 (D.C. Code Section 45-2532) and as delegated to the Department of Housing and Community Development pursuant to Mayor's Order 86-27, effective February 6, 1986; and as further identified in DHCD Organizational Order No. 85-10, dated November 29, 1985, including the functional statement attached thereto, approved November 29, 1985.

(3) All of the functions of the Department of Housing and Community Development related to the operations and administration of the subsidized housing programs established pursuant to Section 8 of the United States Housing Act of 1937, as amended, including the functions identified in the following DHCD Organizational Orders:

(a) All of the functions relating to the Section 8 Housing Program Division of the Housing and Business Resources Administration as identified in DHCD Organizational Order 82-5, dated April 26, 1982, including the functional statement attached thereto, approved April 26, 1982; except the functions relating to Rent Regulatory Agreements identified in the Moderate, Substantial Rehabilitation and Rent Regulatory Branch of the Section 8 Housing Program Division.

(b) All of the functions relating to the development, production and financing of Section 8 Subsidized Housing of the Multifamily Housing Development Finance Division of the Neighborhood Improvement Administration as identified in DHCD Organizational Order 84-7, dated August 1, 1984, including the functional statement attached thereto, approved August 1, 1984.

IV. TRANSFERS

All positions, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the duties and functions assigned herein, are hereby transferred to the Department of Public and Assisted Housing.

V. ORGANIZATION

The Director of the Department of Public and Assisted Housing is authorized to organize the personnel and property transferred herein within any organizational unit of the Department as the Director deems appropriate.

VI. ABOLISHMENT

The National Capital Housing Authority is hereby abolished.

REORGANIZATION OF THE DISTRICT

VII. EFFECTIVE DATE

This Reorganization Plan No. 1 of 1987 shall become effective in accordance with Section 422(12) of Public Law 93-198, or on a date thereafter to be designated pursuant to Executive Order of the Mayor.

Part B

REORGANIZATION PLAN NO. 2 OF 1987.

(Effective July 3, 1987).

I. PURPOSE

The purpose of this reorganization is to extend the Mayor's authority to issue grants under Section 13 of the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Code Sec. 6-932 (1986 Supp.)) (hereinafter the "Water Act") to the Director of the Department of Public Works. This authority is in addition to similar authority granted to the Director of the Department of Consumer and Regulatory Affairs.

II. FUNCTIONS

The following function shall be vested in both the Department of Consumer and Regulatory Affairs and the Department of Public Works:

Under Section 13 of the Water Act, the function of issuing grants to universities and institutions for research concerning the quality of District waters.

III. TRANSFERS

There is no transfers of positions, property, records or unexpended balances of appropriations, allocations and other funds available or to be made available relating to the duties and functions assigned herein.

IV. Effective Date

The provisions of this Plan shall become effective pursuant to the promulgation of an executive order of the Mayor establishing the same no later than thirty (30) calendar days after this Plan has been approved in accordance with the requirements of Section 422(12) of District of Columbia Self-Government and Governmental Reorganization Act, Public Law 93-198, effective December 24, 1973 (D.C. Code Sec. 1-242(12) [1-204.22]).

MAYOR'S STATEMENT

This Reorganization is a reallocation of delegated authority. The Departments of Consumer and Regulatory Affairs and Public Works are to share the authority to issue grants pursuant to the Water Pollution Control Act of 1984

("the Act"), D.C. Code § 6-921 [8-103.01] et seq. By Mayor's Order 85-152, dated September 12, 1985, I delegated my authority to administer the Act to the Director of the Department of Consumer and Regulatory Affairs. Since I issued that Order, however, it has become clear that it should be modified to coincide more clearly with the respective functions of, and projects managed by, the Departments of Consumer and Regulatory Affairs and Public Works.

In particular, I believe a reorganization to permit Public Works to issue grants for projects related to, or affecting, the Blue Plains Wastewater Treatment Plant and the improvement of water quality in the Potomac and Anacostia Rivers will result in a more efficient utilization of departmental resources and staff. While the missions and responsibilities of the two departments are related, often closely, Public Works is most knowledgeable of the time, program requirements, technical support and other constraints associated with projects such as the combined sewer abatement program and the Anacostia River cleanup effort. These and similar programs impact upon the operation and plant processes of Blue Plains and the requirements imposed upon the District under the National Pollution Discharge Elimination System permit issued by the U.S. Environmental Protection Agency.

The federal government contributes 55 percent (and in the past contributed 75 percent) of the cost of various construction and water quality projects. The application process often entails a series of deadlines and submittal requirements uniquely and readily within the Public Works' purview. Therefore, in order to maximize the District's responsiveness to both federal grant application requirements and the subsequent release of such funds to District's grantees, I am proposing a reorganization to permit Public Works and Consumer and Regulatory Affairs to share the grant making authority set forth in Section 13 (D.C. Code § 6-932 [8-103.12]) of the Act.

Under this proposed change, Consumer and Regulatory Affairs will still have authority to issue grants for projects which fall under its responsibilities as the state regulatory agency for the District of Columbia. Public Works will have authority to issue grants for research related to the construction and monitoring of public facilities designed to improve water quality. Apart from the sharing of authority, no other changes are necessitated by this reorganization. Both departments will continue to obtain federal grants within their existing office structures and will issue grants to local recipients. Consequently, while no reduction in expenditures is contemplated, neither will expenditures increase, because both departments will utilize current staff to administer grant fund.

The assignment of these duties jointly to the two departments administering the District's environmental programs and responsibilities ultimately will ensure the public health and safety and the quality of District and regional waters; and there will be no additional burden upon District resources.

Subchapter IX. 1988.

Part A

REORGANIZATION PLAN NO. 3 OF 1988.

(Effective October 8, 1988).

Prepared by the Mayor and transmitted to the Council of the District of Columbia on July 14, 1988, pursuant to the provisions of Section 422(12) of the Charter of the District of Columbia.

I. PURPOSE

This plan changes the name of the Educational Institution Licensure Commission to the Education Licensure Commission and transfers the function of licensing and otherwise regulating proprietary schools from the Director, Department of Consumer and Regulatory Affairs to the Education Licensure Commission.

II. CHANGE OF NAME

The Education Institution Licensure Commission, established by § 3 of the D.C. Law 1-104, the Education Licensure Commission Act of 1976, D.C. Code § 31-1603 [§ 38-1303], is hereby renamed the Education Licensure Commission.

III. TRANSFER OF FUNCTIONS

The functions with respect to proprietary schools vested in the Director of the Department of Consumer and Regulatory Affairs by Council Regulation No. 71-30, as amended, 16 DCMR § 1200 et seq., Commissioner's Order 71-458 (December 28, 1971), Mayor's Order 78-42 (February 17, 1978), Reorganization Plan No. 1 of 1983, and Mayor's Order 83-92 (April 7, 1983) are hereby transferred to the Education Licensure Commission.

IV. ORGANIZATION

The Mayor is authorized to organize the personnel and property of the Commission to fulfill the functions transferred by this plan.

V. EFFECTIVE DATES

This Reorganization Plan No. 3 of 1988 shall become effective pursuant to the promulgation of an executive order of the Mayor establishing the same no later than thirty (30) calendar days after this plan has been approved in accordance with § 422(12) of the District of Columbia Self-Government and Governmental Reorganization Act, Public Law 93-198, D.C. Code § 1-242(12) [§ 1-204.22].

MAYOR'S STATEMENT

Education is one of the highest priorities of my administration. I am dedicated to expanding educational opportunities for our citizens and improving the educational system in the District of Columbia, both public and private. This is a cornerstone of our programs for economic development and self-sufficiency.

As a step in this continuing effort, I have decided to consolidate some of the District of Columbia educational authorities and services, and to strengthen the role of the District Government in the area of postsecondary education. One such consolidation and strengthening is this Reorganization Plan, and the accompanying proposed amended regulations for proprietary schools.

In general, the proprietary schools have served the community well. They have provided trade, technical and self-improvement instruction beyond the high school level to students who did not seek a college education, but who aspired to careers requiring other kinds of knowledge, skills, and abilities. In many instances, these students became employable by this instruction, and upwardly mobile in their chosen field of work. Thus, the proprietary schools provide a service that has important results for the economy of the District, as well as the lives of individual citizens.

However, experience has shown that the provision of poor instruction or unexpected closure by a few such schools can have a serious harmful effect on the students. Students typically borrow significant amounts to pay tuition, and if they are left with unmarketable skills or a prematurely terminated education, they may be worse off than before matriculation. In such cases, the individual and his or her family suffers. So too do the other schools, who rely on their reputations to do business. And so too, does the District of Columbia, which loses not only the opportunity for adding to the available skilled work force, but also the opportunity for decreasing the demand for financial assistance to unemployed or underemployed residents.

For these reasons, it has become clear that strengthening the regulation of proprietary schools is in the public interest. Therefore, I have decided to transfer this function to the Educational Institution Licensure Commission, and change its name to the Education Licensure Commission. The Commission now licenses and regulates private institutions that offer college level education, and serves as the State Approving Agency for education programs eligible for veterans who get assistance from the Veterans Administration. The Commission members are qualified members of the higher education profession, with experience and expertise in regulating postsecondary educational institutions. The Commission has a fine record of protecting the community from college level diploma mills, and improving the education available to citizens of the District of Columbia.

In considering this additional assignment, the Commission has determined that amendments to the existing regulations are required. The Commission has prepared proposed amended regulations, which provide new educational criteria for licensing, new requirements for student records, and new authority for monitoring schools' compliance with the regulations. All of the business

REORGANIZATION OF THE DISTRICT

licensing requirements are retained. These proposed amended regulations are transmitted with this Plan for Council approval.

An increase in the cost of regulating proprietary schools will result from these steps. However, the increase is modest and will provide the resources for the Commission to carry out its new responsibilities.

The Plan and amended regulations will further integrate proprietary schools into the educational system in the District of Columbia, and provide the basis for improvements in the quality of instruction received by their students.

I urge the Council to join me in this improvement of our educational system, by approving the Reorganization Plan and the amended regulations.

Part B

REORGANIZATION PLAN NO. 4 OF 1988.

(Effective December 15, 1988).

I. PURPOSE

The purpose of this reorganization is to consolidate, within the Metropolitan Police Department, certain licensing and regulatory functions related to security officers, Regulation 74-31, enacted December 1, 1974, as amended by the Security Officer Licensing Facilitation Act of 1977, D.C. Law 2-29, effective October 26, 1977, the Uniform Requirements for Security Officers Amendment Act of 1984, D.C. Law 5-180, effective March 16, 1985, the End of Session Technical Amendments Act of 1984, D.C. Law 5-159, effective March 14, 1985 and functions related to private detectives pursuant to the Licensing and Bonding of Private Detectives, Regulation 70-30, enacted July 9, 1970, as amended by the Regulation Concerning Uniforms to be Worn by Specialmen and by Unarmed Uniformed Guards and Security Officers, Regulation 71-20, enacted June 6, 1971, the Regulation Establishing Standards for Certification and Employment of Security Officers, Regulation 74-31, enacted December 1, 1974 and the Security Officer Licensing Facilitation Act of 1977, D.C. Law 2-29, effective October 26, 1977.

II. FUNCTIONS

With Regard To Security Officers

The functions of administering applications, charging the license and examination fees, and the investigation, certification, and examination of applicants as well as issuing, denying, suspending, or revoking licenses, which were vested in the Department of Consumer and Regulatory Affairs pursuant to Reorganization Plan No. 1 of 1983, effective March 31, 1983, are hereby transferred to the Metropolitan Police Department.

With Regard To Private Detectives

The functions of administering applications, charging the license fee, issuing the license, and investigating and issuing identification cards as well as denying, suspending, or revoking the license, which were vested in the

GOVERNMENT ORGANIZATION

Department of Consumer and Regulatory Affairs pursuant to Reorganization Plan No. 1 of 1983, effective March 31, 1983, are hereby transferred to the Metropolitan Police Department.

III. TRANSFERS

All records relating to the duties and functions transferred in part II are hereby transferred to the Metropolitan Police Department.

IV. ORGANIZATION

The Chief of Police, Metropolitan Police Department, in the performance of the duties and functions assigned by this plan, is authorized to establish such organizational components with specified functions as the Chief of Police deems appropriate. The Director of the Planning and Development Division, Metropolitan Police Department, shall develop any reports and evaluation systems as necessary to assess the effect of the reorganization plan.

V. EFFECTIVE DATE

The provisions of this plan shall become effective on a date to be specified by an Executive Order of the Mayor no later than 30 days after this plan becomes effective in accordance with section 422(12) of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 92-198, effective December 24, 1973, D.C. Code sec. 1-242(12) [§ 1-204.22].

MAYOR'S STATEMENT

Reorganization Plan No. 4 of 1988, which would consolidate within the Metropolitan Police Department (MPD) functions related to licensing and regulating security officers and private detectives, is the result of several years of planning between the Department of Consumer and Regulatory Affairs (DCRA) and the Metropolitan Police Department. The need for this reorganization grew out of the original rationale for establishing DCRA. This rationale was to create a central location in the District of Columbia to register and license businesses, individuals and activities.

In DCRA's "One-Stop" center for business licensing, the objective of centralizing the licensure functions could not be achieved for security officers and private detectives because of the various approvals needed from MPD. These approvals and fingerprinting were performed at three separate locations outside of DCRA's offices.

Now MPD's Security Officers Management Branch is located at the Reeves Center on 14th and U Streets, N.W. Thus, with this reorganization all the licensing functions will be in one location for security officers and private detectives. The reorganization will effectively eliminate the current division of regulatory functions by consolidating these functions within MPD. The result of this consolidation will be to streamline the administration and enforcement of these two business activities. In order to sufficiently carry out these

consolidated functions, MPD will augment it's staff by four (4) new clerk positions.

Finally, this reorganization will affect only those licensing and regulatory functions which are now being performed by DCRA. Functions related to the licensing and regulation of security officers and private detectives now being performed by other Departments will remain in those Departments.

I stand ready to move forward with this reorganization.

Subchapter X. 1989.

Part A

REORGANIZATION PLAN NO. 1 OF 1989.

(Effective November 1, 1989).

DEPARTMENT OF HUMAN RIGHTS AND MINORITY BUSINESS DEVELOPMENT

I. ESTABLISHMENT

There is hereby established, in the Executive Branch of the Government of the District of Columbia, under the supervision of a Director, a Department of Human Rights and Minority Business Development.

II. PURPOSE

The purpose of the Department of Human Rights and Minority Business Development is to ensure an end to illegal discriminatory practices in employment, housing and commercial space, public accommodations, educational institutions and District Government and private sector contracting. The Department will promote equal opportunity and equal access in all aspects of life in the District of Columbia, as authorized by the laws of the District of Columbia.

III. FUNCTIONS

The following functions are hereby transferred to the Director of the Department of Human Rights and Minority Business Development:

A. All of the functions of the staff director and additional staff of the Minority Business Opportunity Commission, appointed pursuant to Section 5(e) of the Minority Contracting Act of 1976, D.C. Law 1-95, D.C. Code, section 1-1144(e) [§ 2-215.04, repealed].

B. All of the functions assigned to the Office of Human Rights by the following statutes and Mayor's Orders and all Mayor's Orders and rules issued pursuant thereto:

GOVERNMENT ORGANIZATION

- (1) Affirmative Action in District Government Employment Act, D.C. Law 1-63, D.C. Code, sec. 1-507 [§ 1-521.01] et seq.;
- (2) The Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Code, sec. 1-2501 [§ 2-1401.01] et seq.;
- (3) Mayor's Order 79-89 ("Sexual Harassment");
- (4) Section 42 of the Cable Television Communications Act of 1981, D.C. Law 4-142, D.C. Code, sec. 43-1841;
- (5) Mayor's Order 83-243 ("Access of the Handicapped to Government Programs");
- (6) Mayor's Order 85-85 ("Compliance with Equal Opportunity Obligations in Contracts");

IV. TRANSFER

All positions, property, records, and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the duties and functions assigned in this plan are transferred to the Department of Human Rights and Minority Business Development. The Director of the existing Office of Human Rights and Executive Director of the Minority Business Opportunity Commission shall be the Director of the Department of Human Rights and Minority Business Development upon the effective date of this plan and shall serve without the necessity of a new Council confirmation process.

V. ORGANIZATION

The Director of the Department of Human Rights and Minority Business Development shall organize the personnel and property transferred in this plan into such organizational units as the Director deems appropriate.

VI. ABOLISHMENT

The following agencies and Offices of the District of Columbia government are hereby abolished:

The Office of Human Rights; and

The offices of staff director and additional staff of the Minority Business Opportunity Commission.

VII. EFFECTIVE DATE

This Reorganization Plan shall take effect on a date to be designated by executive order of the Mayor within 30 days after the expiration of Council review provided in sec. 422(12) of the District of Columbia Self-Government and Governmental Reorganization Act, D.C. Code, sec. 242(12) [§ 1-204.22].

Subchapter XI. 1992.

Part A

REORGANIZATION PLAN NO. 1 OF 1992.

(Approved July 2, 1992).

Prepared by the Mayor and transmitted to the Council of the District of Columbia on July 2, 1992, pursuant to the provisions of Section 422(12) of the District Charter, District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-242(12) [§ 1-204.22]).

I. ESTABLISHMENT

An Unclaimed Property Unit is hereby established in the Executive Branch of the Government of the District of Columbia, under the supervision and control of the District of Columbia Controller within the Office of the District of Columbia Controller of the Office of Financial Management. The Unclaimed Property Unit hereby established, and the functions and personnel assigned thereto, shall constitute an organizational unit of the Office of the District of Columbia Controller.

II. PURPOSE

The Unclaimed Property Unit is established in the Office of the District of Columbia Controller, under the supervision and control of the District of Columbia Controller, for the purpose of more efficiently operating the Government of the District of Columbia. To effect the enhancement of the District government's efficiency, the Unclaimed Property Unit will be aligned with the Office of the District of Columbia Controller, the office that is responsible for the District's financial management and control and that maintains the District's official accounts.

III. FUNCTIONS

All of the duties and functions of the Unclaimed Property Unit in the Department of Finance and Revenue established under The District of Columbia Uniform Disposition of Unclaimed Property Act, as amended, effective March 5, 1981 (D.C. Law 3-160; D.C. Code, sec. 42-201 [§ 41-101] et seq.) ("the Act"), the rules issued pursuant thereto and Mayor's Order 81-82, dated March 27, 1981, 28 DCR 1740 (April 17, 1981) which delegated to the Department of Finance and Revenue, the Mayor's authority to administer the Act and to issue rules are hereby transferred to the Office of the District of Columbia Controller within the Office of Financial Management.

GOVERNMENT ORGANIZATION

IV. TRANSFERS

All positions, property, records and funds relating to the duties and functions transferred in this plan are hereby transferred to the Office of the District of Columbia Controller.

V. ORGANIZATION

The District of Columbia Controller of the Office of the District of Columbia Controller is authorized to organize the personnel and property transferred herein within any organizational unit as he or she deems appropriate to fulfill the functions transferred by this plan.

VI. ABOLISHMENT

The existing Unclaimed Property Unit within the Department of Finance and Revenue is hereby abolished.

VII. RESCISSION

All orders and parts of orders in conflict with any of the provisions of this plan are, to the extent of such conflict, hereby repealed, except that any rules or regulations adopted or promulgated by virtue of the authority granted by such orders, shall remain in force until properly revised, amended or rescinded.

VIII. EFFECTIVE DATE

This Reorganization Plan No. 1 of 1992 shall become effective on a date to be specified by an executive order of the Mayor issued no later than 30 calendar days after this plan has been approved in accordance with the requirements of section 422(12) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-242(12) [§ 1-204.22]), and section 5(c) of the Governmental Reorganization Procedures Act of 1981, effective October 17, 1981 (D.C. Law 4-42; D.C. Code, sec. 1-299.4(c) [§ 1-315.04]).

MAYOR'S STATEMENT

The Unclaimed Property Unit of the Audit, Compliance and Investigation Administration of the Department of Finance and Revenue is responsible for the collection and maintenance of all abandoned tangible and intangible personal property reported and delivered to the Mayor for safekeeping and fiscal growth of the District of Columbia pursuant to the Uniform Disposition of Unclaimed Property Act of 1980, as amended, effective March 5, 1981 (D.C. Law 3-160; D.C. Code, sec. 42-201 [§ 41-101] et seq.). In addition, the Unclaimed Property Unit is required to attempt to locate and return the unclaimed property to the rightful owner.

REORGANIZATION OF THE DISTRICT

To date, the Unclaimed Property Unit has collected approximately \$47 million and has returned approximately \$4 million to the rightful owners. As a result, over \$42 million have been contributed to the fiscal development of the District of Columbia since the creation of the program.

I am committed to the most efficient operation of the District government. To this end, I submit herewith, Reorganization Plan No. 1 of 1992 that would transfer the functions of administering the District of Columbia's unclaimed property program from the Department of Finance and Revenue to the Office of the District of Columbia Controller within the Office of Financial Management. The Reorganization Plan would transfer the entire Unclaimed Property Unit, including its staff of seven persons, its property, records and funding to the Office of the District of Columbia Controller.

To enhance the efficiency of the District government's operation, the reorganization would align the Unclaimed Property Unit with the Office of the District of Columbia Controller, the office within the District government that is responsible for the financial management of the District and that maintains the official accounts of the District.

The Unit's current alignment within the Department of Finance and Revenue does not conform to the Department's general mission: tax administration. Although the unclaimed property program produces revenue for the District, it is not a tax program. Instead, it is more appropriately characterized first, as a financial management and fiduciary service which the District renders to persons who have abandoned their property within our jurisdiction and then second, as a program that generates revenue for the District. Consequently, it is more efficient to place the program in the office that is charged with the management and control of the District's financial affairs.¹

Part B

REORGANIZATION PLAN NO. 2 OF 1992.

(Effective October 1, 1992).

Prepared by the Mayor and transmitted to the Council of the District of Columbia, pursuant to the provisions of Section 422(12) of the Charter of the District of Columbia.

DISTRICT OF COLUMBIA OFFICE OF TOURISM AND PROMOTIONS

I. ESTABLISHMENT

The Office of Tourism and Promotions ("Office") is hereby established in the Executive Branch of the Government under the Deputy Mayor for Economic

¹ Only 12 other states in the country have their unclaimed property programs within their Departments of Finance and Revenue or Departments of Revenue, while 25 states administer their programs through their Treasury Departments or Controller's Offices.

Development (DMED). The Office shall be supervised and administered by a Director who shall be appointed by the Mayor to a position in the Executive Service pursuant to Title X of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139, effective March 3, 1979, (D.C. Code former sections 1-611.1 — 1.611.2, and subject to the advice and consent of the Council. The Mayor's Special Assistant for Tourism shall be the Acting Director pending confirmation by the Council.

II. PURPOSE

The purpose of the Office is to increase revenues generated by tourism and related promotional, leisure and entertainment activities. The Office of Tourism and Promotions will coordinate the economic development efforts of the city in the areas of tourism and conventions and will better serve local firms engaged in the tourism industry by providing a more efficient delivery of public services.

The Office coordinates the development of an integrated advertising, marketing and promotional plan for the District which will lead to increased business and leisure travellers to the District. Travellers will be encouraged to patronize Washington business establishments, thereby increasing employment and business opportunities for District residents and businesses. Every effort will be made to stimulate increased opportunities for small, minority and women-owned District-based businesses.

This Office shall also have the responsibility for promoting Washington, D.C., as a venue for film, television and recording production. Promotion of Washington, D.C., as a site for entertainment-related business activities fits neatly with tourism promotion. Out-of-state film, television and record companies need to be "sold" on Washington, D.C.

The monuments and other attractions, affordable hotel and guest accommodations, and neighborhood diversity are all selling points to be emphasized by both the tourism and entertainment functions in District government. These functions will be jointly promoted under the Office of Tourism and Promotions.

III. ORGANIZATION

The Director shall be appointed by the Mayor and shall report to the Deputy Mayor for Economic Development. The Director shall have oversight responsibility for the D.C. Committee to Promote Washington and the Office of Motion Picture and Television Development.

The Director shall initially hire two staff persons to carry out the functions of this Office. As need is demonstrated, justified and approved through budget authorization, additional staff may be hired to carry out the functions of the Office of Tourism and Promotions.

REORGANIZATION OF THE DISTRICT

IV. FUNCTIONS

- A. The functions of the Office of Tourism and Promotions shall be to:
1. Coordinate and manage all District government activity related to tourism, convention and business travel and related promotional activities;
 2. Serve as the Mayor's liaison to District agencies on issues affecting tourism and conventions;
 3. Serve as a liaison to those agencies that affect the development or use of tourism attractions;
 4. Maintain oversight on the use of Hotel Occupancy Tax ("HOT") dollars by promotional agencies, including the D.C. Committee to Promote Washington, the Washington, D.C. Convention and Visitors Association, the D.C. Chamber of Commerce and the Washington Convention Center;
 5. Serve as liaison between government and the aforementioned agency recipients of HOT funds;
 6. Insure that the Mayor's priorities relating to tourism and convention activities are conveyed to interested organizations and citizens;
 7. Serve as the representative of the Mayor for tourism, promotion and convention related functions;
 8. Arrange meetings, workshops, conferences and receptions to achieve the goals outlined in Section 2. above;
 9. Encourage and assist in the coordination of activities that promote or create attractions in the District for the tourist or business traveller; and
 10. Work to stimulate employment and economic development activities through tourism, entertainment and convention enterprises.
- B. All functions heretofore performed by the Mayor's Special Assistant for Tourism are transferred to the Office of Tourism and Promotions.

V. TRANSFERS

All positions, property, records and unexpended balances of appropriations, allocation, and other funds available or to be made available relating to the duties and functions assigned herein are transferred to the Office of Tourism and Promotions. This includes all positions, budget and other available resources currently held in the Office of Business and Economic Development and allocated to the Office of Motion Picture and Television Development and to the D.C. Committee to Promote Washington.

VI. ABOLISHMENT

The position of Mayor's Special Assistant for Tourism is abolished.

VII. EFFECTIVE DATE

This Reorganization Plan No. 2 of 1992 shall become effective on October 1,

1992, following Council review, in accordance with Section 422(12) of P.L. 93-198.

MAYOR'S STATEMENT

The tourism industry is the heartbeat of private enterprise in the District of Columbia. Tourism is responsible for generating approximately \$3 billion dollars in the District in annual revenues. The tourist industry generates much of the activity and business of our city and, for that reason, it is a priority in my economic development strategy.

More than 19 million visitors came to Washington, D.C. in 1991 for vacation purposes. Those leisure visitors who stay overnight, stay in Washington an average of 2.9 nights. An estimated 1.68 million of these overnight leisure visitors stay in the District of Columbia hotels producing 2,230,000 hotel room nights for the city. In addition to dollars spent in over 88 hotels, these visitors spend millions of dollars in the District of Columbia retail establishments, restaurants, theaters and on city transportation.

While our neighboring jurisdictions become more aggressive, the District cannot afford to stand still. The Office of Tourism and Promotions will work to make Washington, D.C., visitor-friendly. We must help neighborhoods become more aware of strategies to encourage visitors to move away from the monumental core and visit the other sections of the District. The government will place more signs in key locations to direct and inform the visitors. We must establish a first class visitor's center; we have to provide more parking for tour buses, and information for those who use tour bus companies.

The District of Columbia cannot rest on its laurels; nor can this government wait for business and leisure travellers to come to our city. The pursuit of the travel dollar is becoming an increasingly competitive strategy among U.S. jurisdictions and international destinations. The state of Virginia spends 10 million dollars annually on tourism promotions. It is no accident that we are familiar with its theme "Virginia is for Lovers." Their national and international advertising budget is \$5.5 million, almost 5 times the amount of money expended by the District of Columbia government.

It is no accident that we know New York state's theme "I Love New York." Approximately ten years ago in the midst of a spate of negative publicity about the safety of New York City, the state legislators voted to support a phenomenal increase in tourism promotion dollars. This action successfully increased the number of visitors and revenue they generated.

This administration will promote tourism as a vehicle for increasing the tax base. It is estimated that tourism generates over \$235 million in tax revenue for the District of Columbia each year. This is new money, completely derived from outside sources, that is poured into Washington's coffers. These funds are used to improve the quality of life for all District residents.

We have to encourage Washington Dulles International Airport to solicit more international flights that bring high spending visitors to our Nation's Capital. We are reviewing our tour guide examination process which is more than 20 years old. We must inform our taxi drivers, our police, our parking

enforcement officers and other front line personnel that tourism is good for our city. Our visitors must be treated with courtesy and respect to encourage travellers to return. These are programs the Office of Tourism and Promotions will coordinate.

The District Government must spend more dollars on tourism promotion. I appreciate the Council's support of \$700,000 in general revenue funds to be appropriated to the Washington Convention Center Enterprise Fund. These funds will be used by the D.C. Committee to Promote Washington to sustain the Committee's national and international advertising campaigns. I know the Council realizes that even with this appropriation, the District of Columbia will rank barely thirtieth (30th) out of fifty (50) states in comparison to the amount of money expended by other states on advertising. During the next fiscal year, we hope to come up with a city theme that will be adopted by individual hotels and businesses who will do their part to promote Washington, D.C., as a place to visit in the minds of potential travellers.

I have frequently stated my desire to make Washington, D.C., an entertainment hub. My enthusiasm for this industry is rooted in the economic benefits of entertainment-related activities. We must do a better job of promoting those entertainment venues like the Kennedy Center, the National Theatre, and Carter Barron. We must bring more international sporting events to our city, e.g., World Cup Soccer and Tour Du Pont. These events generate dollars and provide recreation for our residents and visitors. These events also create contracting opportunities for District based businesses and jobs for city residents.

Because our society is fascinated with sports and entertainment, media outlets tend to cover these events more. World Cup Soccer will be viewed internationally by an estimated 26 billion viewers. The District could not, on its own, afford to purchase that kind of advertising. Tour Du Pont, in its first year in Washington, D.C., was carried by CBS sports and ESPN cable live, reaching more than 10 million households.

Several motion pictures have been filmed in Washington, D.C., as a result of the successful efforts of the Mayor's Office of Motion Picture and Television Development. When productions are filmed here, revenue is generated for electricians, make-up artists, sound mixers, video companies, construction crews, truckers, caterers, etc. In addition, because of Washington's distinctive skyline, filming in our city also advertises the unique attractions of our city. The City Council wisely voted to expand staffing and increase our capacity to generate over \$30 million in annual revenues for local businesses and the District's revenue fund.

We have tremendous resources and talents within our borders. My objective is to set priorities in cooperation with key business leaders affected by these programs so that real economic benefits can occur. The public/private partnership between the District government and the Hotel Association on the Convention Center expansion is but one of many examples that we will initiate to achieve our objectives.

I know that with your support our goals will be achieved and that the potential of tourism and entertainment promotion in Washington, D.C., will be realized.

Part C

REORGANIZATION PLAN NO. 3 OF 1992.

(Approved January 20, 1993).

Prepared by the Mayor and transmitted to the Council of the District of Columbia, pursuant to the provisions of section 422(12) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 790; Pub. L. 93-198; D.C. Code § 1-242(12) [1-204.22] (1992)), the Governmental Reorganization Procedures Act of 1981, effective October 17, 1981 (D.C. Law 4-42; D.C. Code § 1-299.1 through § 1-299.7 [§§ 1-315.01 through 1-315.07]), and § 128 of the Fiscal Year 1993 Budget Request Act (D.C. Act 9-186; 39 DCR 2674, 2686, April 17, 1992).

**DISTRICT OF COLUMBIA OFFICE OF
BANKING AND FINANCIAL
INSTITUTIONS**

I. TRANSFER OF OBFI CONTROL CENTER

The D.C. Office of Banking and Financial Institutions ("OBFI") is hereby transferred from the Deputy Mayor for Economic Development ("DMED") control center to a separate OBFI control center/responsibility center. OBFI will continue to be administered by the Superintendent and will remain a part of the economic development cluster reporting to the Mayor.

II. PURPOSE

The purpose of this plan is to transfer the OBFI budget from the budget of the DMED to a separate OBFI responsibility/control center.

III. ORGANIZATION

There will be a transfer of OBFI's budget to a separate control/responsibility center. No organizational staffing or funding changes will occur at OBFI as a consequence of this shift other than the transfer of the authorization for one full time employee from the Office of International Business, a transfer of \$18,000 to fund that position from the Office of Business and Economic Development, plus an overall budget increase of \$68,000, all of which was approved by the Council in the FY 93 budget.

IV. FUNCTIONS

OBFI's functions are contained in the District of Columbia Regional Interstate Banking Act of 1985 Amendments Act of 1985, D.C. Law 6-107, effective April 11, 1986, codified in chapters 1, 4, 5, and 8 of title 26 [chapters 1, 2, 7, 13

REORGANIZATION OF THE DISTRICT

of title 26] of the D.C. Code. These statutory duties of OBFI will remain unchanged as a result of this transfer.

V. EFFECTIVE DATE

This Reorganization Plan No. 3 of 1992 becomes effective the later of the date of Council approval in accordance with § 128 of the Fiscal Year of 1993 Budget Request Act (D.C. Act 9-186), or on a date thereafter to be designated pursuant to Executive Order of the Mayor.

MAYOR'S STATEMENT

This Administration has made economic development a chief priority. As regulator of the District's financial institutions, the Office of Banking and Financial Institutions ("OBFI") has played a vital role in fostering economic development for the District, particularly for low- and moderate-income areas and those areas of the District which are traditionally underserved.

To further augment OBFI's pivotal role in effectuating the economic development cluster goals, we propose that OBFI become a separate control center, as distinguished from the current situation in which the OBFI budget is a part of the Deputy Mayor for Economic Development ("DMED") control center.

This shift will not result in any changes to the functions, staff or budget of OBFI. Nevertheless, it has become clear that OBFI's significant contributions to the economic development goals of the District warrant the creation of a distinct OBFI control center, comparable to other state banking regulators and on par with the other economic development cluster agencies.

I urge the Council to join me in establishing a separate control center for OBFI, by approving this Reorganization Plan.

Subchapter XII. 1993.

Part A

REORGANIZATION PLAN NO. 2 OF 1993.

(Approved July 21, 1993).

Prepared by the Mayor and transmitted to the Council of the District of Columbia pursuant to the provisions of Section 422(12) of the District Charter.

OFFICE OF THE ASSISTANT CITY ADMINISTRATOR FOR HUMAN RESOURCES DEVELOPMENT

I. ESTABLISHMENT

There is hereby established in the Executive Office of the Mayor, the "Office of the Assistant City Administrator for Human Resources Development" under the direction and control of an Assistant City Administrator who shall be

appointed by the Mayor to a position in the Executive Service pursuant to Title X of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139, effective March 3, 1979, (D.C. Code former sections 1-611.1 to 1-611.2) [§§ 1-610.01 to 1-610.02].

II. PURPOSE

The purpose of the Office of the Assistant City Administrator for Human Resources Development is to coordinate the activities of the Human Resources Development Cluster to provide training and employment services for both District Government employees and residents to meet the technological demands of today's and tomorrow's workplace.

III. FUNCTIONS

The functions of the Office of the Assistant City Administrator for Human Resources Development shall be to:

- (1) Establish a Human Resources Development Cluster of District government agencies;
- (2) Provide oversight for and coordinate the activities of the Human Resources Development Cluster;
- (3) Plan and coordinate training and employment services to be provided by the Human Resources Development Cluster to District Government employees and residents;
- (4) Plan and coordinate effective human resource management programs through the Office of Personnel;
- (5) Review the negotiation of compensation and working condition agreements affecting District government employees through the Office of Labor Relations;
- (6) Develop and coordinate job training and development programs; job placement programs; workers' compensation programs for injured workers; an unemployment compensation program; a wage-hour program; an occupational safety and health program; and compensation to crime victims through the Department of Employment Services;
- (7) Serve as the liaison to the education community and to administer the Office of Education licensing functions through the Office of Education and the Educational Licensure Commission; and
- (8) Coordinate the Human Rights functions of the Department of Human Rights and Minority Business Development.

IV. TRANSFERS

All positions, personnel, records, unexpended balances of appropriation and functions of the Office of Human Resources Development in the Office of Personnel are hereby transferred to the Office of the Assistant City Administrator for Human Resources development.

V. ORGANIZATION

The Assistant City Administrator for Human Resources Development is

REORGANIZATION OF THE DISTRICT

authorized to organize personnel and property within the Office of the Assistant City Administrator as is deemed appropriate.

VI. EFFECTIVE DATE

The provisions of this plan shall become effective pursuant to the requirements of Section 422(12) of Public Law 93-198, or on a date thereafter to be designated pursuant to Executive Order of the Mayor.

MAYOR'S STATEMENT

The Office of the Assistant City Administrator for Human Resources Development, to be created in 1993, will have oversight of all Human Resources Development Cluster agencies and their functions. Funding for the Office of the Assistant City Administrator was proposed in the revised FY 1993 and FY 1994 budget submissions and transmitted to the City Council in February, 1993.

The overall mission of the Office of the Assistant City Administrator for Human Resources Development is to coordinate training and development services provided to both Government employees and residents of the District to meet the technological demands of today's and tomorrow's workplace. The people of this city are its most precious commodity and they have a much greater capacity for productivity than has been realized. The greatest missing factor is investment in their potential to make them more competitive. Quality results begin with a quality investment in our human resources which is key to addressing many of our complex social and economic problems in the District. Presently, there is a mismatch between the technical demands of the marketplace and the skills and abilities of our government employees, as well as our citizens. The Human Resources Development Cluster agencies would educate, train, and retrain our workforce to confidently meet the demands of our highly technological environment. Local government sets the tone for economic development and our commitment to a well trained government and local workforce will be a tremendous marketing asset.

Many large organizations, both private and public, periodically undergo system change based on a change in mission; financial constraints; market and service needs; or in response to technology. The Assistant City Administrator's Office and the cluster would be established at a time that our local government will be undergoing a Reduction In Force. The proposed RIF is due to our financial condition and the need to streamline the size and structure of the workforce. A Reduction In Force is painful, however, something positive will result from this pain. It will change how our government provides services, and provide us with an opportunity to utilize employees more effectively.

The Human Resources Development Cluster will consist of the following entities: The Office of the Assistant City Administrator for Human Resources Development; the Office of Personnel; the Office of Labor Relations and Collective Bargaining; the Department of Employment Services; the Office of Education; the Human Rights component of the Department of Human Rights

and Minority Business Development; and the Office of Government Workforce Training and Development.

Part B

REORGANIZATION PLAN NO. 3 OF 1993.

(Approved October 7, 1993).

**TRANSFER OF THE WEATHERIZATION ASSISTANCE
PROGRAM FROM THE DEPARTMENT OF HOUSING
AND COMMUNITY DEVELOPMENT TO BE
CONSOLIDATED WITH THE ENERGY
ASSISTANCE PROGRAM UNDER THE
D.C. ENERGY OFFICE WITHIN THE
DEPARTMENT OF PUBLIC WORKS**

Prepared by the Mayor and transmitted to the Council of the District of Columbia pursuant to the provisions of Section 422(12) of the D.C. Self-Government and Governmental Reorganization Act, P.L. 93-198; 87 Stat. 790, codified at D.C. Code § 1-242 (1992 Repl. Vol.) and Section 1-299.3(1) of D.C. Law 4-42, the Government Reorganization Procedures Act of 1981.

**DISTRICT OF COLUMBIA DEPARTMENT
OF HOUSING AND COMMUNITY
DEVELOPMENT**

I. TRANSFER

The Weatherization Assistance Program (WAP) in the Department of Housing and Community Development (DHCD) is hereby transferred to the D.C. Energy Office (DCEO) under the Department of Public Works.

II. PURPOSE

The purpose of this plan is to consolidate functions being performed at both DHCD and DCEO. This transfer will eliminate overlapping and duplication of effort and will allow for a more efficient operation of the District Government's weatherization programs.

The weatherization services provided by DHCD are consistent with those provided by DCEO. DHCD provides grants to eligible District residents for the purpose of weatherizing their homes (both owners and tenants). The funds for DHCD's operation of the programs are provided annually by the U.S. Department of Energy. Costs for the administration of the program are a part of the grant.

The DCEO operates programs which provide weatherization services and energy assistance in the form of monthly payments for household energy costs

REORGANIZATION OF THE DISTRICT

to eligible, low-income District residents. DCEO also provides energy efficiency education and promotional activities for residential, commercial, governmental, and institutional entities in the District. In addition, DCEO provides intervention for energy efficiency in utility regulatory proceedings and legislative matters. DCEO is authorized by law (D.C. Law 3-132) to serve as the lead agency to develop and implement the District's responses to energy related problems.

III. ORGANIZATION

The transfer of the WAP will include the reassignment of one (1) staff position (term), four (4) automobiles, all equipment and records associated with the program, and any unexpended grant funds. The U.S. Department of Energy will redirect the WAP grant to the DCEO.

IV. FUNCTIONS

The WAP is operated in accordance with the Federal regulations (10 CFR Part 400) promulgated by the U.S. Department of Energy and will not change.

V. EFFECTIVE DATE

This Reorganization Plan No. 3 of 1933, becomes effective in accordance with Section 422(12) of Public Law 93-198, or on a date thereafter to be designated pursuant to Executive Order of the Mayor.

MAYOR'S STATEMENT

In a continuing effort to make the District Government a more effective and efficient vehicle for the residents of the District of Columbia, this Administration proposes that the Weatherization Assistance Program (WAP) at the Department of Housing and Community Development (DHCD) be transferred to the D.C. Energy Office under the Department of Public Works (DPW).

This transfer would consolidate functions already provided by DCEO, reduce the duplication of services and allow the District to more effectively operate its various energy related programs. This consolidation would also increase efficiency to the fullest extent practicable as it relates to the weatherization of housing units.

The Department of Housing and Community Development receives funding for the Weatherization Assistance Program for low-income persons from the U.S. Department of Energy. These funds can be redirected to DCEO. The D.C. Energy Office is authorized under D.C. Law 3-132 to serve as the lead agency to develop and implement the District's responses to energy-related problems. Therefore, the transfer of WAP to DCEO would serve to fully implement the law.

This action will result in the redirection of the WAP grant, the transfer of one (1) staff position, four (4) automobiles, equipment, records and unexpended grant funds.

I urge the Council to join me in our continuing effort to improve city services for the residents of the District of Columbia by approving this Reorganization Plan.

Part C

REORGANIZATION PLAN NO. 4 OF 1993.

(Approved October 7, 1993).

I. PURPOSE

(A) To transfer certain functions of Office of Business and Economic Development (OBED) and the Office of International Business (OIB) to the jurisdiction and control of the Office of Economic Development (OED).

(B) To change the position title from Deputy Mayor for Economic Development to Assistant City Administrator for Economic Development.

II. FUNCTIONS

All functions associated with the positions transferred from OBED and OIB are hereby transferred to OED.

III. TRANSFERS

Two (2) OIB positions and five (5) OBED positions, associated property, records and unexpended balances of appropriations, allocations, and other funds, if any, that relate to the positions and functions assigned herein, shall be transferred to OED. All authority for administering activities previously authorized or delegated to OIB and OBED is hereby transferred to OED.

IV. ORGANIZATION

The deputy Mayor for Economic Development, in the performance of the duties and functions assigned by this plan, is authorized to establish such organizational components with specified subcomponents as deemed appropriate.

V. RESCISSION

All orders and parts of orders in conflict with any of the provisions of this plan and the Council mandate are, to the extent of such conflict, hereby repealed.

VI. EFFECTIVE DATE

This Reorganization Plan 4 of 1993 shall become effective in accordance with Section 422(12) of Public Law 93-198, D.C. Code, 1-242(12) [1-204.22] update, and Section 5(c) of Public Law 4-42, D.C. Code 1-299.4(c) [§ 1-315.04].

MAYOR'S STATEMENT

POSITION TITLE CHANGE

For more than five years, the Office of Economic Development, headed by a Deputy Mayor, has operated under the direction and control of the City Administrator. The position title has created ambiguities regarding the management level of the position and the reporting hierarchy therein. Changing the position title from Deputy Mayor for Economic Development to Assistant City Administrator for Economic Development will more accurately reflect the organizational structure and provide clarity to the Office.

The authority and responsibilities of the Assistant City Administrator will remain the same as under the Deputy Mayor for Economic Development. The functions of the Office of Economic Development (OED) remains the same as in prior years. Although most economic development cluster agency activities will not change, some will undergo restructuring to optimize investment and development opportunities and to improve regulatory oversight responsibilities.

This restructuring of cluster agencies, coupled with the change in name of the position to the Assistant City Administrator for Economic Development will provide a more structured and centralized agency operation and will define clearly, the role of the Assistant City Administrator.

CONSOLIDATION OF FUNCTIONS

In early 1991, after an Executive Branch review of the activities being performed by the Office of Business and Economic Development (OBED) and the Office of International Business (OIB), it was determined that a substantial degree of overlap and duplication of functions and responsibilities existed between the two agencies. In addition, the Council of the District of Columbia, in its consideration of the FY 1994 Appropriated Budget, abolished both agencies and transferred certain responsibilities and positions to the Office of Economic Development (OED).

Based on the review, the need to economize on efforts and dollars, the need to centralize economic development activities in the District government, the legislative action taken by the Council, and in keeping with my pledge to streamline government, I have authorized the reorganization of the two offices, as cited herein.

In accordance with D.C. Law 4-42, the "Governmental Reorganization Procedures Act of 1981," this reorganization will be accomplished by the transfer of certain staff and functions of OBED and OIB to the administrative control of the Assistant City Administrator for Economic Development in OED. I have determined that both offices have so similar operational responsibilities that the District would be best served by a unified administration. Not only will this change clarify administrative roles and responsibilities, but it will also provide a sharper focus to the District's economic development efforts with the private business sector.

In summary, economic development and related activities currently being performed separately by the OBED and OIB, both of which promote the District in a local, national, and international arenas, should be merged. The centralization of these activities will diminish fragmented, disjointed, and duplicated service delivery and thus, allow the District to promote its marketing campaign and business services more efficiently and cost-effectively.

Subchapter XIII. 1995.

Part A

REORGANIZATION PLAN NO. 1 OF 1995 REORGANIZATION PLAN NO. 5 OF 1996.

[Effective April 9, 1997; projected to expire November 20, 1997].

STATEMENT

Reorganization Plan No. 1 of 1995 would consolidate all psychiatric services provided to inmates at the Central Detention Facility ("D.C. Jail") and the Lorton Correctional Facility within the Department of Corrections ("DOC") to improve the medical and psychiatric services provided to inmates at these locations.

The genesis of this proposed Reorganization Plan is *Campbell v. McGruder*, C.A. No. 1462-71 (D.D.C. 1971) and *Inmates of D.C. Jail v. Jackson*, C.A. No. 75-1668 (D.D.C. 1975), cases active in U.S. District Court. On January 27, 1995, the Court ordered the District of Columbia government ("District") to implement the Special Officer's Initial Remedial Plan for Mental Health Care, Medical Care and Compliance Monitoring at the District of Columbia Jail ("Initial Remedial Plan"), which requires DOC to assume full responsibility for all medical and psychiatric services provided to inmates at the Central Detention Facility and at the Lorton Correctional Facility. The Initial Remedial Plan further requires staff who provide psychiatric services to be hired under the exclusive budget authority and auspices of DOC, and that all staff currently detailed to provide mental health services at the D.C. Jail shall become employees of DOC if they meet the standards for employment. The Initial Remedial Plan establishes staffing requirements and deadlines for hiring appropriate staff. Fines are not assessed for failure to terminate the details to the Department of Human Services ("DHS") staff. However, the District has been fined for failure to hire staff within the time set forth in the Initial Remedial Plan.

Under the current organizational structure, DOC is responsible for providing housing, security, general medical care, and other services to inmates, but not mental health services. DHS, through an informal arrangement that began in the 1960s, has provided consultative mental health services to DOC, and in 1980, pursuant to the decree in *Campbell v. McGruder*, administered and

funded an intermediate care program for 160 residents in 2 mental health units. This consultative arrangement was formalized with Reorganization Plan No. 1 of 1986, also known as the Final Mental Health System Implementation Plan. Under this consultative arrangement, DHS recommended treatment, but DOC retained responsibility for providing such treatment.

Unfortunately, this bifurcated arrangement did not provide maximum clinical services in an efficient and economical manner. The sharing of information was hampered by the strict confidentiality requirements of the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Code § 6-2001 et seq. [7-1201.01]). Further, the bifurcation of responsibility, whereby DOC physicians treat mental problems and DHS physicians treat mental illness, at times impedes the efficient delivery of services, results in redundant services, and makes tracking of inmates difficult.

With the Reorganization Plan, DOC will assume responsibility for meeting all of the medical needs of the inmate population, including mental health, which should improve services to inmates by streamlining the administration and provision of services. To carry out its new functions, DOC will augment its Psychiatric Services Program, established in 1992, by the transfer of all vacant and funded positions and the corresponding appropriated budget from the Bureau of Correctional Services, Forensic Services Administration, Commission on Mental Health Services ("CMHS") to DOC.

The Reorganization will not affect court-ordered criminal pretrial and post trial examinations requested by District or United States courts, as these examinations will continue to be the responsibility of the CMHS. Commitments under applicable law following an acquittal by reason of insanity or transfers of inmates to CMHS in accordance with section 928 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1340; D.C. Code § 24-302 [§ 24-502]), or Superior Court Mental Health Rule 9 also are unaffected.

I. PURPOSE

The purpose of this reorganization is to consolidate the provision of medical and mental health services provided to inmates at the Central Detention Facility and the Lorton Correctional Facility within the Department of Corrections, to improve the coordination of mental health and medical services, and to eliminate barriers to the exchange of mental health information created by the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Code § 6-2001 et seq. [§ 7-1201.01]).

II. TRANSFER OF FUNCTIONS

The function of providing mental health services to inmates in Department of Corrections facilities provided by the Bureau of Correctional Services, Commission on Mental Health Services, is hereby transferred to the Department of Corrections.

III. OTHER TRANSFERS

All vacant and filled positions, personnel, property and unexpended balances of appropriations, allocations, and other funds available or to be made available to perform the functions set forth under Section II above are hereby transferred to the Department of Corrections.

All records relating to the duties and functions transferred in Section II are hereby transferred to the Department of Corrections, except that mental health records shall be transferred only in accordance with the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Code § 6-2001 et seq. [§ 7-1201.01]).

IV. REORGANIZATION

The Director of the Department of Corrections is authorized to organize the personnel and property transferred herein into such organizational components as the Director deems appropriate, and is authorized to develop any reports and evaluation systems necessary to assess the effectiveness of the Reorganization Plan.

Part B

REORGANIZATION PLAN NO. 2 OF 1995.

Plan B. Reorganization No. 2 of 1995 to Transfer to the Mayor Certain Discretionary Authority Vested in the Department of Human Services.

Subchapter XIV. 1996.

Part A

REORGANIZATION PLAN NO. 4 OF 1996.

(Effective July 17, 1996).

Prepared by the Mayor and transmitted to the Council of the District of Columbia on May 24, 1996, pursuant to section 422(12) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, approved December 24, 1973 (87 Stat. 770; D.C. Code, sec. 1-242(12) [§ 1-204.22]); the Governmental Reorganization Procedures Act of 1981, effective October 17, 1981 (D.C. Law 4-42; D.C. Code sec. 1-299.1 [§ 1-315.01] et seq.) and the Department of Public Health Establishment Act of 1992, effective March 13, 1993 (D.C. Law 9-182; D.C. Code, sec. 6-131 [§ 7-151] et seq.).

I. ESTABLISHMENT

There is hereby established, in the Executive Branch of the government of the District of Columbia ("District"), under the supervision of the Director, a Department of Health ("Department"). The Director shall have full authority

REORGANIZATION OF THE DISTRICT

over the Department and all functions and personnel assigned thereto, including the power to re-delegate to other employees and officials of the Department such powers and authority as, in the Director's judgment, are warranted in the interests of efficiency and sound administration.

II. PURPOSE

The mission of the Department is to ensure the provision of high quality health services by establishing District-wide health policy and standards and guidelines for safe and quality health service delivery; foster and promote health education and disease prevention; structure an efficient and cost-effective health care financing system; implement, monitor and evaluate the Department's strategic health plan and the District-wide health plan; and undertake activities that will support the highest quality of life achievable for District residents and visitors.

III. ORGANIZATION

There are hereby established in the Department: (1) the Office of the Director, with such subordinate staff offices as are required to carry out overall management responsibility for the Department; (2) the Finance and Administration Offices, with such subordinate staff offices as are required to coordinate and manage the financial and administrative functions for the Department; (3) the Health Regulation Administration, to develop the District-wide health plan, assure quality management and compliance with applicable federal and District rules that govern public health systems, license health care and social service professionals; regulate occupational and professional conduct and standards, health care and social service facilities and ensure compliance with applicable federal and District rules that govern uses and practices that affect the physical environment; (4) the State Health Affairs Administration, to fulfill state agency functions in the areas of maternal and child health, ambulatory, long term and preventive health care; (5) the Health Care Finance Administration, to administer the Medicaid program, Medical Charities Program and develop service coverage, service delivery and reimbursement policies for the District government's health care financing programs; (6) the Addiction, Prevention and Recovery Administration, to coordinate the administer drug and substance abuse prevention and treatment programs and services; and (7) the HIV/Aids Administration, to coordinate programs and support services for Human Immuno-deficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS).

IV. ACTIONS

A. The functions of the major organizational components of the Department shall be to:

(1) Plan and evaluate the delivery of comprehensive health care services for District residents and visitors;

(2) Provide services to promote good health, reduce morbidity and mortality resulting from major preventable hazards and diseases;

(3) Provide treatment, rehabilitation and substance abuse prevention services to residents of the District and services to identify substance abusers;

(4) Provide nutritious foods and nutrition education to eligible infants, children, mothers and the elderly;

(5) Develop a District-wide health plan and issue certificates of need for new facilities and services in accordance with the health plan;

(6) Provide educational services and oversee the delivery of medical services to combat the spread of AIDS;

(7) Administer the District government's Medicaid and Medical Charities programs;

(8) Regulate occupational and professional conduct, health care and social services facilities, and ensure compliance with applicable federal and District rules that govern uses and practices that affect the physical environment;

(9) Administer the school health program in elementary and secondary schools;

(10) Administer the provision of long term care services;

(11) Determine the level of care for placement of individuals in nursing home and community residential facilities;

(12) Administer the District government's Nurse Aide Program and Personal Care Aide Training, Competency, Evaluation and Certificate Programs;

(13) Provide information on sexually-transmitted diseases and prevention services;

(14) Coordinate the development and implementation of health care policies and procedures and oversee the establishment of health care and quality assurance standards;

(15) Advocate and communicate broad health policy on behalf of the Executive for inclusion in legislation and to serve as a guide for resource allocation determinations and service delivery decisions by private sector providers;

(16) Establish and promote public/private sector partnerships and consumer participation that fosters the systematic and integrated delivery of comprehensive health services;

(17) Monitor and evaluate operations to ensure management accountability within the Department; and

(18) Develop, coordinate and monitor the delivery of quality medical services to clients of the Department of Human Development.

(B) The functions of the office of the Director shall be to provide direction and ensure the coordination of operating Administration, review policy developed by the Department's administration and oversee compliance with statutes and rules that pertain to the operations of the Department and programs administered by the Department. The Office of the Director shall supervise the following staff offices:

(1) The Office of the General Counsel, which shall review legal matters pertaining to the Department and its programs, analyze existing or proposed federal or local legislation and rules, manage the development of new legisla-

REORGANIZATION OF THE DISTRICT

tion and rules and coordinate legal services to the Department and the representation of the Department with the Office of the Corporation Counsel [now Attorney General for the District of Columbia].

(2) The Office of the Medical Examiner, which shall conduct investigations of homicides, suicides, accidental and drug-related deaths to determine the cause of death.

(3) The State Center for Health Policy and Statistics, which shall administer the District's government vital records system, provide comprehensive health needs assessment, policy development and implementation, and program research and evaluation.

(4) The Office of Emergency Health and Medical Services, which shall oversee the development and delivery of emergency health care by coordinating government and community resources.

(C) The functions of the Finance and Administration Offices are to coordinate and manage the financial and administrative function of the Department under the supervision of the Director. The Office of the Director also shall supervise the following three offices:

(1) The Office of the Controller, which shall coordinate the analysis, development, and presentation of the Department's budget, monitor expenditures and enter all financial transactions into the financial management system.

(2) Office of Contracts, Procurement and Grants, which shall coordinate and effect the purchases of goods and services of the Department, by reviewing and processing contracts, procurements and grants.

(3) Office of Facilities Management, which shall assure that the Department has adequate, efficient and cost-effective facilities, administrative, printing and graphic services.

V. TRANSFER OF FUNCTIONS

(A) The following functions are hereby transferred to the Department of Health:

(1) Each of the functions assigned, and authorities delegated to the Director of the Department of Human Services as set forth in Sections III.(K), (L), and (P), of Reorganization Plan No. 3 of 1986, dated January 3, 1987; and

(2) The administrative and management support functions in the Department of Human Services as set forth in Sections III.(A), (B), (C), (D), (E), and (F), of Reorganization Plan no. 3 of 1986, dated January 3, 1987, that relate to the functions set forth in Section V.(A)(I) above. [(A)(I) of this section.]

VI. OTHER TRANSFERS

All positions, personnel, property, records and unexpended balances of appropriations, allocations, and other funds available or to be made available that relate to the functions set forth under Section V. above, are hereby transferred to the Department.

VII. REORGANIZATION

The Director of the Department is authorized to organize the personnel and

property transferred herein within any organizational unit of the Department as the Director deems appropriate. Until such establishment, existing Orders establishing the components of the Commission of Public Health remain in force, where they do not conflict with this Plan.

VIII. EFFECTIVE DATE

This Reorganization Plan No. 4 in all its parts shall become effective pursuant to the promulgation of an executive order of the Mayor establishing the same, which shall be issued no later than thirty (30) calendar days after this plan has been approved in accordance with the requirements of Section 422(12) of the Home Rule Act (D.C. Code, sec. 1-242(12) [§ 1-204.22(12)]).

Part B

REORGANIZATION PLAN NO. 7 OF 1996.

(Effective December 13, 1996).

I. Purpose

(A) To abolish the International Business Program (IBP) in the Office of Economic Development (OED) and transfer its functions to a newly established Office of International Affairs.

(B) To create the Office of International Affairs (OIA) as an independent subordinate agency within the Executive Office of the Mayor.

(C) To transfer the foreign protocol functions of the Protocol Office (PO), in the Office of the Secretary of the District of Columbia (OSDC) to the OIA.

(D) To designate one of the transferred positions as Director of the Office of International Affairs which shall be a subordinate agency head appointed by the Mayor with the consent of the Council.

(E) To coordinate the international activities of the Office of Tourism and Promotions (OTP) and the Washington Convention and Visitors Bureau, and other District agencies with the OIA.

II. Functions

(A) The Office of International Affairs shall have the following functions:

(1) To attract and bring foreign business and other international trade and investment to the District.

(2) To coordinate the international affairs activities of all District agencies and to provide a point of contact with OIA liaison from other agencies in order to foster cooperation an international affairs involving other agencies.

(3) To be responsible for international protocol including the coordination of the District's activities with visiting international dignitaries.

(B) All functions of the IBP associated with the positions transferred from the IBP, and the international protocol functions of the OSDC are hereby transferred to the OIA.

REORGANIZATION OF THE DISTRICT

III. Transfers

Two IBP positions and one position from the OTP, associated property, records and unexpended balances of appropriations, allocations, and other funds, of any, that related to the positions and functions assigned herein, shall be transferred to the OIA. All authority for administering activities previously authorized or delegated to the OED and the OSDC, directly related to the functions outlined in Section II above, is hereby transferred to the OIA.

IV. Organization

The Director of the Office of International Affairs, in the performance of the duties and functions assigned by this plan, is authorized to establish such organizational components with specified subcomponents as deemed appropriate.

V. Rescission

All orders and parts of orders in conflict with any of the provisions of this plan are, to the extent of such conflict, hereby rescinded.

VI. Effective Date

This Reorganization Plan No. 7 of 1996 shall become effective in accordance with section 422(12) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 790; D.C. Code § 1-242(12) [§ 1-204.22], and section 5(c) of the Governmental Reorganization Procedures Act of 1981, effective October 17, 1981 (D.C. Law 4-42; D.C. Code § 1-299.4(c) [§ 1-315.04]).

Subchapter XV. 1998.

Part A

REORGANIZATION PLAN NO. 1 OF 1998.

Reorganization for the Office of the Corporation Counsel and the Department of Human Services.

I. PURPOSE

The purpose of this reorganization plan is to consolidate into one agency, the operation and administration of the child support enforcement program pursuant to Pub. L. 93-647 ("Title IV-D" of the Social Security Act), Pub. L. 98-378 and Pub. L. 100-485, and District of Columbia law relating to the establishment of paternity and support and the enforcement of support obligations. Under this Reorganization Plan, the Office of Corporation Counsel which performs the legal functions related to the child support program, will, upon the effective date of this Reorganization Plan, directly administer the

GOVERNMENT ORGANIZATION

District's Title IV-D Program previously performed by the Department of Human Services.

II. TRANSFER OF FUNCTIONS

All functions of the Office of Paternity and Child Support Enforcement, within the Department of Human Services, are hereby transferred to the Office of the Corporation Counsel.

III. ESTABLISHMENT

(a) There is hereby established in the Office of the Corporation Counsel a new Child Support Division which shall be comprised of the current Child Support Section (within the OCC Family Services Division) and the Office of Paternity and Child Support Enforcement, Department of Human Services.

(b) The Office of Corporation Counsel:

(1) shall be the state agency for purposes of applying for and receiving federal funds for the operations of the Title IV-D program relating to the establishment of paternity and support and the enforcement of support obligations. Toward that end, the Office shall take all steps necessary for the submission and approval of the District of Columbia State Plan under the Title IV-D and any plan amendments.

(2) shall be responsible for representing the interest of the District in all legal matters relative to establishing and enforcing support orders in all Title IV-D cases; and

(3) shall coordinate and enter into such cooperative agreements as necessary with other District government agencies engaged in child support enforcement activities, including, but not limited to, the Department of Human Services, the Superior Court of the District of Columbia, the Department of Revenue, the Department of Health, the Metropolitan Police Department, and the Lottery and Charitable Games Control Board.

IV. OTHER TRANSFERS

All positions, personnel, property, records, equipment, and unexpended balances of appropriations, allocations, and other funds available, or to be made available, that relate primarily to the functions set forth in Part II above are hereby transferred to the Office of the Corporation Counsel.

V. REALIGNMENT FOLLOWING REORGANIZATION

The Corporation Counsel, in the performance of duties and functions transferred by this Reorganization Plan, is authorized to establish such organizational components with such specified functions as he/she deems appropriate.

VI. ABOLISHMENT

The Office of Paternity and Child Support Enforcement within the Commission on Social Services, Department of Human Services, is hereby abolished.

VII. EFFECTIVE DATE

This Reorganization Plan No. 1 of 1998 in all its parts shall become effective pursuant to the promulgation of an executive order of the Mayor establishing the same after this plan has been approved in accordance with the requirements of Section 422(12) of the Home Rule Act (D.C. Code § 1-242(12) [§ 1-204.22]) and section 161 of the District of Columbia Appropriations Act, 1998, Public Law 105, 100, approved November 19, 1997.

Part B

REORGANIZATION PLAN NO. 5 OF 1998.

Reorganization of the Department of Human Services.

STATEMENT

This reorganization would consolidate all psychiatric services provided to inmates at the Central Detention Facility (“D.C. Jail”) and the Lorton Correctional Facility within the Department of Corrections (“DOC”) to improve the medical and psychiatric services provided to inmates at these locations.

The genesis of this proposed Reorganization Plan is *Campbell v. McGruder*, C.A. No. 1462-71 (D.D.C. 1971) and *Inmates of D.C. Jail v. Jackson*, C.A. No. 75-1668 (D.D.C. 1975), cases active in U.S. District Court. On January 27, 1995, the Court ordered the District of Columbia government (“District”) to implement the Special Officer’s Initial Remedial Plan for Mental Health Care, Medical Care and Compliance Monitoring at the District of Columbia Jail (“Initial Remedial Plan”), which requires DOC to assume full responsibility for all medical and psychiatric services provided to inmates at the Central Detention Facility and at the Lorton Correctional Facility. The Initial Remedial Plan further requires staff who provide psychiatric services to be hired under the exclusive budget authority and auspices of DOC, and that all staff currently detailed to provide mental health services at the D.C. Jail shall become employees of DOC if they meet the standards for employment. The Initial Remedial Plan establishes staffing requirements and deadlines for hiring appropriate staff. Fines are not assessed for failure to terminate the details to the Department of Human Services (“DHS”) staff. However, the District has been fined for failure to hire staff within the time set forth in the Initial Remedial Plan.

Under the current organizational structure, DOC is responsible for providing housing, security, general medical care, and other services to inmates, but not mental health services. DHS, through an informal arrangement that began in the 1960s, has provided consultative mental health services to DOC, and in 1980, pursuant to the decree in *Campbell v. McGruder*, administered and funded an intermediate care program for 160 residents in 2 mental health units. This consultative arrangement was formalized with Reorganization Plan No. 1 of 1986, also known as the Final Mental Health System Implemen-

tation Plan. Under this consultative arrangement, DHS recommended treatment, but DOC retained responsibility for providing such treatment.

Unfortunately, this bifurcated arrangement did not provide maximum clinical services in an efficient and economical manner. The sharing of information was hampered by the strict confidentiality requirements of the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Code § 6-2001 [§ 7-1201.01] et seq.). Further, the bifurcation of responsibility, whereby DOC physicians treat mental problems and DHS physicians treat mental illness, at times impedes the efficient delivery of services, results in redundant services, and makes tracking of inmates difficult.

With the Reorganization Plan, DOC will assume responsibility for meeting all of the medical needs of the inmate population, including mental health, which should improve services to inmates by streamlining the administration and provision of services. To carry out its new functions, DOC will augment its Psychiatric Services Program, established in 1992, by the transfer of all vacant and funded positions and the corresponding appropriated budget from the Bureau of Correctional Services, Forensic Services Administration, Commission on Mental Health Services ("CMHS") to DOC.

The Reorganization will not affect court-ordered criminal pretrial and post trial examinations requested by District or United States courts, as these examinations will continue to be the responsibility of the CMHS. Commitments under applicable law following an acquittal by reason of insanity or transfers of inmates to CMHS in accordance with section 928 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1340; D.C. Code § 24-302 [§ 24-502]), or Superior Court Mental Health Rule 9 also are unaffected.

I. PURPOSE

The purpose of this reorganization is to consolidate the provision of medical and mental health services provided to inmates at the Central Detention Facility and the Lorton Correctional Facility within the Department of Corrections, to improve the coordination of mental health and medical services, and to eliminate barriers to the exchange of mental health information created by the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Code § 6-2001 [§ 7-1201.01] et seq.).

IV. REORGANIZATION

The Director of the Department of Corrections is authorized to organize the personnel and property transferred herein into such organizational components as the Director deems appropriate, and is authorized to develop any reports and evaluation systems necessary to assess the effectiveness of the Reorganization Plan.

Subchapter XVI. 2000.

Part A

HISTORICAL PRESERVATION, REORGANIZATION 2000.

(Oct. 19, 2000, D.C. Law 13-172, § 402, 47 DCR 6308.)

All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Department of Consumer and Regulatory Affairs for the operation and implementation of the historic preservation functions of the Department of Consumer and Regulatory Affairs as set forth in section III(B)(8) of Reorganization Plan No. 1 of 1983, effective March 31, 1983, are hereby transferred to the Office of Planning, established pursuant to Mayor's Order 83-25, effective January 3, 1983.

All of the functions assigned and authority delegated to the Department of Consumer and Regulatory Affairs concerning historic preservation as set forth in section III(B)(8) of Reorganization Plan No. 1 of 1983, effective March 31, 1983 are hereby transferred to the Office of Planning, established pursuant to Mayor's Order 83-25, effective January 3, 1983.

Subchapter XVII. 2002.

Part A

REORGANIZATION PLAN NO. 1 OF 2002.

Motor Vehicle Sales Finance Company Reorganization.

(a) All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Department of Consumer and Regulatory Affairs for the operation and implementation of Chapter 3 of Title 1 of the District of Columbia Municipal Regulations (16 DCMR § 300 et seq.), with respect to the licensing and regulation of motor vehicle sales finance companies, are hereby transferred to the Department of Banking and Financial Institutions, established by § 26-551.03, effective June 9, 2001.

(b) All of the functions assigned and authority delegated to the Department of Consumer and Regulatory Affairs concerning Chapter 3 of Title 16 of the District of Columbia Municipal Regulations (16 DCMR § 300 et seq.), with respect to the licensing and regulation of motor vehicle sales finance companies, are hereby transferred to the Department of Banking and Financial Institutions, established by § 26-551.03, effective June 9, 2001.

Subchapter XVIII. 2003.

Part A

REORGANIZATION PLAN NO. 1 OF 2003.

Reorganization of Plan for the Office of Risk Management.

1. Purpose for the Reorganization Plan

Pursuant to the Governmental Reorganization Procedures Act of 1981 this represents the Reorganization Plan for the Office of Risk Management (Plan). The Plan would establish the Office of Risk Management (Office), state the purpose of the Office, state the duties of the Chief Risk Officer and state the authority and functions of the Office.

The Plan would transfer responsibility for the District of Columbia's public sector disability compensation program, public sector safety and health management program, claims for unliquidated damages filed against the District government and the risk management aspects affecting the safety and physical security of District government facilities to the newly established Office.

The Plan would also provide for the Office to purchase insurance for the benefit of the District, place administration of the Settlements and Judgments Fund within the Office subject to the financial management of the District's Chief Financial Officer and repeal the authority of the Office of the Corporation Counsel [now Attorney General for the District of Columbia] to settle claims against the District of Columbia under Part III, A, subsections 1 and 2 of Reorganization Order 50, as amended (June 26, 1953). In addition, the Plan would establish a Risk Management Council and effectively repeal all reorganization plans and executive orders in conflict with the Plan.

2. Definitions

For the purpose of the Plan, unless otherwise required by the context the term:

(1) "Agency risk management representative" means the individual in each agency whose duties include exposure identification and assessment and risk control strategy coordination at the agency level on behalf of the agency director. Where this individual obtains the necessary professional training as specified by the Chief Risk Officer they may be referred to as the "Agency Risk Manager".

(2) "Chief Risk Officer" means the head of the Office of Risk Management.

(3) "Claims management" means the process used to administer and gather data concerning any notice to the District government of any alleged wrongful acts, whether tortuous, contractual, or equitable in nature, for which the District, its officers, agents, or employees are allegedly responsible, including, but not limited to, claims arising from unresolved civil, administrative, or judicial litigation.

REORGANIZATION OF THE DISTRICT

(4) “Cost of risk” means the cost of actual losses sustained, administrative costs of the risk management program, costs of funding losses, costs of risk control efforts and other outside service costs.

(5) “District government facility” means a building either owned, controlled, occupied, or leased by the District government.

(6) “Office of Risk Management” means the office (Office) established by the Plan.

(7) “Risk assessment” means the process for conducting reviews and investigations of District operations, activities and facilities to identify and measure risk exposures.

(8) “Risk control” means the effective minimization of the probability, frequency, and severity of accidental losses on a pre-loss and post-loss basis through the selection and implementation of mitigation strategies, a proactive compliance monitoring program for safety and security, and contingency planning for District government operational interruptions or emergencies.

(9) “Risk exposure” means exposure to issues or matters which have potential to create financial, reputational, efficiency and organizational losses, including losses from any alleged wrongful acts, whether tortuous, contractual, or equitable in nature, for which the District, its officers, agents, or employees are allegedly responsible, including, but not limited to, claims arising from unresolved civil, administrative, or judicial litigation.

(10) “Risk financing” means claims management and the professional anticipation and planned funding of loss payments resulting from adjudication or settlement of claims.

(11) “Risk funding” means the selection and application of specific techniques to meet the financial obligation caused by unexpected losses including retention such as self-insurance, or transfer such as purchasing insurance or other contractual transfer, and the oversight of those techniques.

(12) “Risk identification and analysis” means the systematic identification, measurement, analysis, and documentation of the District government’s exposure to risk.

(13) “Risk management” means the continuous process of risk identification and analysis, employing effective risk assessment, risk control, risk financing, and risk funding strategies to minimize and control risk exposure and actual and potential losses.

(14) “Risk map” means a schematic drawing that illustrates the prioritization of risk exposures in terms of anticipated frequency and severity of occurrence suggesting organizational hierarchy and priority of strategies for risk management.

3. Creation of the Office of Risk Management.

(a) There is created within the executive branch of the government of the District of Columbia the Office of Risk Management (Office) with direct oversight by the City Administrator.

(b) The head of the Office shall be the Chief Risk Officer, who shall be appointed by the Mayor with the advice and consent of the Council pursuant

to section 422 (1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 790; D.C. Code § 1-204.22 (1)). To be eligible for appointment as the Chief Risk Officer a person shall have demonstrated, through his or her knowledge and experience, the ability to administer a public risk management office of the size and complexity of the Office established by the Plan.

(c) The Chief Risk Officer shall be paid at an annual rate, determined by the Mayor. To the extent that the annual salary rate exceeds that set forth in the District of Columbia Comprehensive Merit Personnel Act of 1978 (CMPA), the proposed salary shall be forwarded to the Council and set forth in a pay resolution approved by the Council as required by the CMPA.

(d) Notwithstanding any delegation of the authority to settle claims that the Mayor may delegate to the Chief Risk Officer, the Chief Risk Officer may redelegate any or all of such settlement authority to the Corporation Counsel [now Attorney General for the District of Columbia].

4. Purpose of the Office of Risk Management.

(a) The purpose of the Office is to provide risk management direction, guidance and support to District government agencies so that they can minimize the total cost of risk, resulting in improved government operations and enhanced service delivery. This will be accomplished by integrating agency programs of systematic risk identification and analysis, selecting and implementing appropriate risk control strategies, and prudently financing anticipated and incurred losses, into a District government integrated risk management program. The result will be to minimize the probability, occurrence and impact of accidental losses in the District government and to support the effective and efficient achievement of the District government's strategic risk management objectives.

(b) The strategic objectives of the Office shall include the:

- (1) Institutionalization of risk management as a regular District-wide and agency-specific function;
- (2) Systematization of the identification and analysis of District-wide and agency-specific exposures to risk;
- (3) Minimization of the likelihood and severity of losses through effective safety and security risk control strategies; and
- (4) Formalization of the philosophy, policies and procedures for financing identified risks and incurred losses.

5. Duties of the Chief Risk Officer.

(a) The Chief Risk Officer shall be the central risk management official for the District government.

(b) The Chief Risk Officer shall exercise full direction and supervision over the Office its functions and personnel, including the authority to organize the Office and to redelegate to employees authority as, in the judgment of the Chief Risk Officer, is warranted in the interests of efficiency and sound administration.

6. Functions of the Office.

The Office, through the Chief Risk Officer, shall:

(a) Identify gaps, omissions, or inconsistencies in risk management practices and policies, and recommend and oversee the implementation of appropriate responsive laws, regulations, rules, or procedures for adoption pursuant to the Plan;

(b) Organize and operate the Office to ensure the accomplishment of the Office's purpose;

(c) Prepare reports as necessary and as required by the Mayor or the Council;

(d) Create and maintain a District government prioritization risk map based on the frequency and severity of projections of anticipated loss;

(e) Minimize the probability, frequency, and severity of accidental losses to the District government on a pre-loss and post-loss basis through a pro-active and compliance monitoring program for safety, security and contingency planning for District government operational interruptions or emergencies;

(f) Conduct and oversee on-site risk management assessments of all District government facilities and operations;

(g) Maintain a risk management resource library for the assistance of agency risk management and Office personnel;

(h) Provide risk management training to District employees and agency risk management representatives;

(i) Appropriately utilize technology to maximize the Office's efforts in accomplishing its purposes under the Plan;

(j) Administer, organize, and exercise all of the powers, duties, and functions concerning the District of Columbia Government Employees' Disability Compensation Program;

(k)(1) Administer, organize, and exercise all of the powers, duties, and functions concerning the District of Columbia Public Sector Occupational Safety and Health Management Program authorized and required by the Occupational Safety and Health Act of 1970, as amended (84 Stat. 1590), Title XX of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-620.01 et seq.), and applicable codes, rules, and regulations including, but not limited to:

(A) the D.C. Occupational Safety and Health Board, Occupational Safety and Health Standards (29 DCMR, Chapters 30-32);

(B) the Building Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986;

(C) the Electrical Code approved pursuant to the Construction Code Approval and Amendments Act of 1986;

(D) the Fire Prevention Code approved pursuant to the Construction Codes Approval Amendments Act of 1986; and

(E) the Plumbing Code approved pursuant to the Construction Code Approval and Amendments Act of 1986.

(2) The Office's authority under this subsection shall not supersede any statutory authority of other District agencies, including but not limited to the

Fire and Emergency Medical Services Department, the Department of Consumer and Regulatory Affairs, the Department of Health, or the Department of Housing and Community Development, with primary enforcement jurisdiction for any of the codes or regulations referenced in this section;

(l) Ensure that safety, physical security, liability, and other risk management concerns of District owned, controlled, leased, or occupied facilities are appropriately addressed. In performing its functions, the Office shall not duplicate the functions of the Office of Property Management as set forth in section 1804 of the Office of Property Management Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Code § 10-1003) [repealed];

(m) Create a culture of risk awareness and management, within the District government, concerning District government facilities, employees, volunteers, and visitors;

(n) By delegation from the Mayor, pursuant to section 422 (b) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 790; D.C. Code § 1-204.22 (6)), procure insurance and utilize alternative risk financing strategies, as necessary and pursuant to an authorized appropriation, for the benefit of the District government to compensate for large liabilities and catastrophic exposure to risk including, but not limited to, tort settlements and judgments, contractual settlements and judgments, and property losses;

(o) Implement and maintain a system for managing the resolution of outstanding recommendations/findings from various sources including the Inspector General, the D.C. Auditor, external District-wide audits with management letter recommendations, court orders, retained consultants and others; and

(p) Procure goods and services and contract for the Office.

7. Disability Compensation Program.

(a) All of the powers, duties and functions transferred to the Office of Personnel under section 1202 of the District of Columbia Government Employees Disability Compensation Reorganization and Amendment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; 48 DCR 6891), are hereby transferred to the Office.

(b) All property, records, personnel, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Office of Personnel under section 1202 of the District of Columbia Government Employees Disability Compensation Reorganization and Amendment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; 48 DCR 6891), are hereby transferred to the Office.

8. Transfer of Public Sector Occupational Safety and Health Management Program.

(a) All of the powers, duties, and functions concerning the District of Columbia public sector Occupational Safety and Health Management Program authorized and required by the Occupational Safety and Health Act of 1970, as

amended (84 Stat. 1590), Title XX of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-620.01 et seq.) and applicable codes, rules, and regulations, including those set forth in section 6 (m) of this act, currently performed by the Department of Employment Services, are hereby transferred to the Office.

(b) All of the property, records, personnel, and unexpended appropriations, allocations, and other funds available or to be made available to the Department of Employment Services for the program described in this section are hereby transferred to the Office.

9. Transfer of the OCC Claims Unit Operations.

(a) The administration and control of the unit set aside for the receipt and processing of claims filed against the District of Columbia government pursuant to D.C. Code § 12-309, presently vested in the Office of the Corporation Counsel [now Attorney General for the District of Columbia], is hereby transferred to the Office.

(b) All of the property, records, personnel and unexpended balances of appropriations, allocations, claim recoveries and other funds available or to be made available to the Office of the Corporation Counsel [now Attorney General for the District of Columbia] for the Claims Unit are hereby transferred to the Office.

10. Risk Management Council.

(a) The Chief Risk Officer shall create and manage a Risk Management Council constituted of agency risk management representatives and professional leaders from the Office.

(b) Through the Risk Management Council, the Chief Risk Officer shall:

(1) Meet with, receive reports from, and generally oversee the functions of agency risk management representatives;

(2) Coordinate, integrate, and guide the work of agency risk management representatives to identify, measure, analyze, and document agency and District government risk exposure;

(3) Facilitate topical interaction among agency risk management representatives and Office leaders to foster the development and effective implementation of a comprehensive, integrated risk management program for the District;

(4) Cultivate awareness, understanding and support for risk, safety and security management initiatives as part of the District's strategic, integrated risk management program; and

(5) Monitor the effectiveness of agency Risk Assessment and Control Committees (RACCs)

(c) The Risk Management Council shall:

(1) Exchange risk management ideas and best practices;

(2) Identify and share available risk management resources;

GOVERNMENT ORGANIZATION

(3) Provide input to the development of District-wide risk management practice standards and risk and safety administrative regulation review;

(4) Establish the risk management culture of the District in support of institutionalizing and systematizing the risk management program of the District;

(5) Identify opportunities for economies of scale in the implementation of risk management strategies;

(6) Participate in loss trend analysis and related exposure awareness communication;

(7) Participate in the evolution of the District risk management information system;

(8) Provide primary coordination to the performance requirements for risk management in agency director's contracts;

(9) Participate in the cost of risk allocation methodology, communication and monitoring; and

(10) Coordinate internal agency emergency response plan development and maintenance including plans for continuity of operations in the event of any emergency, and definition of interaction points with the external District Emergency Response Plan coordinated by the Emergency Management Agency.

11. Repealers.

Any provision of a Reorganization Plan or Executive Order in conflict with any provision of this reorganization is hereby repealed, except that any regulations adopted or promulgated by virtue of the authority granted by such conflicting provision shall remain in force until properly revised.

12. Effective Date.

The Plan shall take effect immediately after the statutorily required sixty (60) day Council review period.

TITLE 2. GOVERNMENT ADMINISTRATION.

Chapter

1. Inspections.
2. Contracts.
3. Procurement.
- 3A. Government Procurement.
- 3B. Other Procurement Matters.
4. Claims Against District.
5. Administrative Procedure.

CHAPTER 1. INSPECTIONS.

Subchapter I. Steam Boilers

Sec.

- 2-101. Citation of subchapter.
- 2-102. "Person" defined.
- 2-103. Boiler Inspection Service created; appointment, qualifications, and duties of Boiler Inspector.
- 2-104. Bond and oath of Inspector.
- 2-105. Certificate of inspection required.
- 2-106. Operation prohibited.
- 2-107. Annual inspection; issuance, contents and display of certificate of inspection; inspection by insurance company.
- 2-108. Revocation or suspension of certificate.
- 2-109. Exemptions.
- 2-110. Inspection fees; cessation of insurance invalidates certificate of inspection.
- 2-111. Right of entry for inspection.
- 2-112. Records.
- 2-113. Use deemed nuisance; proceedings to abate.
- 2-114. Filing information; penalties; separate offenses.

Sec.

- 2-115. Authorization to make regulations and fix fees.
- 2-116. Repeal of inconsistent provisions; exception.
- 2-117. Severability.
- 2-118. Effective date; publication and enforcement of regulations and fees.

Subchapter II. Inspectors Generally

- 2-131. Regulation of electricity; examination fees; exemption of public utilities.
- 2-132. Electrical Engineer; electrical inspectors.
- 2-133. Assistant Electrical Engineer.
- 2-134. Appointment of Inspector of Plumbing; duty.
- 2-135. Regulation of plumbing; licensing of plumbers and gas-fitters; noncompliance.
- 2-136. Plumbing permit fees; disposition of fees collected.
- 2-137. Powers of Inspector of Plumbing.
- 2-138. Duties of Assistant Inspector of Buildings.
- 2-139. Inspector of Elevators and Fire Escapes.
- 2-140. Notice of attempted residential service.

Subchapter I. Steam Boilers.

§ 2-101. Citation of subchapter.

This subchapter may be cited as the "Boiler Inspection Act of the District of Columbia."

(June 25, 1936, 49 Stat. 1917, ch. 802, § 1.)

Prior Codifications. — 1981 Ed., § 1-1001.

1973 Ed., § 1-701.

§ 2-102. "Person" defined.

Wherever the word "person" is used in this subchapter it shall include individuals, firms, partnerships, associations, and corporations.

(June 25, 1936, 49 Stat. 1917, ch. 802, § 2.)

Prior Codifications. — 1981 Ed., § 1-1002. 1973 Ed., § 1-702.

§ 2-103. Boiler Inspection Service created; appointment, qualifications, and duties of Boiler Inspector.

There is hereby constituted a Boiler Inspection Service in the Department of Licenses, Investigation and Inspections of the District of Columbia, to be composed of the following: (1) A Boiler Inspector who shall be qualified by training and experience in the construction and operation of steam boilers and unfired pressure vessels, and who, under an official designated by the Mayor of the District of Columbia, shall have charge of the enforcement of the provisions of this subchapter and of the regulations promulgated hereunder; and (2) such other employees as may be necessary for the proper performance of the work. All such officials and employees shall be appointed by the Mayor of the District of Columbia.

(June 25, 1936, 49 Stat. 1917, ch. 802, § 3.)

Prior Codifications. — 1981 Ed., § 1-1003. 1973 Ed., § 1-703.

Editor's notes. — Department of Inspections abolished: The Department of Inspections was abolished and the function thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 55 of the Board of Commissioners, dated June 30, 1953, and amended August 13, 1953, and December 17, 1953, established under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Order set out the purpose, organization, and functions of the new Department. The Order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section, and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The Order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952, the named organizations were abolished. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions vested in the Department of Licenses and Inspection by Reorganization Order No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by Mayor's Order No. 78-42, dated February 17, 1978, which Order established the Department of Licenses, Investigation and Inspections. The functions of the Department of Licenses, Investigations, and Inspections were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-104. Bond and oath of Inspector.

The said Inspector shall give bond, with 2 sufficient securities, to be approved by the Mayor, in the sum of \$2,000, and he shall take and subscribe the following oath or affirmation before a notary public or a judge of the Superior Court of the District of Columbia: "I do solemnly swear that I will diligently, faithfully, and impartially execute the duties of my office without favor."

(Leg. Assem., June 25, 1873, ch. 25, § 4; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Prior Codifications. — 1981 Ed., § 1-1004. 1973 Ed., § 1-704.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-105. Certificate of inspection required.

No person shall use or cause to be used any steam boiler operating at a pressure in excess of 15 pounds per square inch, or operating at a pressure less than 15 pounds per square inch unless provided with an unassisted gravity return, or any unfired pressure vessel operating at a pressure in excess of 60 pounds per square inch and having a capacity in excess of 15 gallons, except such vessels as may be exempted by the Council of the District of Columbia, without having first obtained a certificate of inspection from the Boiler Inspector.

(June 25, 1936, 49 Stat. 1917, ch. 802, § 4.)

Section references. — This section is referred to in §§ 2-106 and 2-108.

Prior Codifications. — 1981 Ed., § 1-1005. 1973 Ed., § 1-705.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(23)

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-106. Operation prohibited.

No person shall operate or cause to be operated any boiler or unfired pressure vessel, referred to in § 2-105, at a pressure greater than that permitted by the certificate of inspection, or while feed pumps, gauges, cocks, valves, or automatic safety-control devices are not in proper working condition, or in violation of any of the regulations promulgated hereunder by the Council of the District of Columbia.

(June 25, 1936, 49 Stat. 1918, ch. 802, § 5.)

Prior Codifications. — 1981 Ed., § 1-1006. 1973 Ed., § 1-706.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-107. Annual inspection; issuance, contents and display of certificate of inspection; inspection by insurance company.

The Boiler Inspector, or one of his assistants, shall inspect annually all boilers and unfired pressure vessels for which a certificate of inspection is required by § 1-1005 and shall determine by actual tests the condition thereof from the standpoint of safety and fitness for operation. If such boiler or vessel be safe and fit for operation, the Boiler Inspector shall issue the certificate of inspection which shall state, among other things, the pressure per square inch such boiler or vessel may be allowed to carry. This certificate of inspection shall be displayed in a conspicuous place in close proximity to the boiler or vessel covered thereby. In the case of a steam boiler or unfired pressure vessel which is regularly insured and inspected at least once a year by an insurance company duly licensed in the District of Columbia and approved by the Mayor of the said District as to its inspection service where a report of such inspection filed within 30 days after such inspection with the Boiler Inspector shows any such boiler or unfired pressure vessel to be in a safe and insurable condition, such inspection and report shall take the place of the inspection hereinbefore provided and the certificate of inspection may be issued upon such report. Insurance companies shall report to the inspectors the cancelation of insurance of any certificate holder.

(June 25, 1936, 49 Stat. 1918, ch. 802, § 6.)

Section references. — This section is referred to in § 2-110.

Prior Codifications. — 1981 Ed., § 1-1007. 1973 Ed., § 1-707.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-108. Revocation or suspension of certificate.

The Boiler Inspector may in his discretion revoke or suspend the certificate of inspection provided in § 2-105 if at any time he shall find any boiler or unfired pressure vessel covered by such certificate to be unsafe or unfit for operation.

(June 25, 1936, 49 Stat. 1918, ch. 802, § 7.)

Prior Codifications. — 1981 Ed., § 1-1008. 1973 Ed., § 1-708.

§ 2-109. Exemptions.

Steam boilers and unfired pressure vessels located in or upon boats or vessels or other floating equipment, or boats or vessels owned or operated by the United States, or upon locomotives, street cars, busses, or other vehicles, operated under the regulations of any federal agency or the Public Service Commission of the District of Columbia, shall be exempt from the provisions of this subchapter.

(June 25, 1936, 49 Stat. 1918, ch. 802, § 8; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21.)

Prior Codifications. — 1981 Ed., § 1-1009. 1973 Ed., § 1-709.

§ 2-110. Inspection fees; cessation of insurance invalidates certificate of inspection.

There shall be paid to the Director of the Department of Finance and Revenue of the District of Columbia by the owner or user, for the issuance of a certificate as required by this subchapter, fees to be fixed from time to time by the Mayor of the District of Columbia for the annual inspection of each steam boiler or unfired pressure vessel, commensurate with the cost of inspection, with power to fix higher fees for the issuance of a certificate where the inspection in connection therewith is made on a Sunday or legal holiday. When an inspection report is filed by an insurance company with the said Boiler Inspector showing that a boiler or unfired pressure vessel has been inspected and found to be in a safe and insurable condition as provided in § 2-107, the owner or user of such insured and inspected boiler or unfired vessels shall be

exempt from the payment of all fees with the exception that there shall be paid to the Director of the Department of Finance and Revenue of the District of Columbia a fee of \$1 by the owner or user prior to the issuance of a certificate of inspection. No such certificate shall be valid after the boiler or unfired pressure vessel shall cease to be insured by an insurance company authorized as provided in § 2-107.

(June 25, 1936, 49 Stat. 1918, ch. 802, § 9.)

Prior Codifications. — 1981 Ed., § 1-1010. 1973 Ed., § 1-710.

References in text. — Pursuant to the Office of the Chief Financial Officer's "Notice of Public Interest" published in the April 18, 1997, issue of the District of Columbia Register (44 DCR 2345) the Office of Tax and Revenue assumed all of the duties and functions previously performed by the Department of Finance and Revenue, as set forth in Commissioner's Order 69-96, dated March 7, 1969. This action was made effective January 22, 1997, nunc pro tunc.

Editor's notes. — Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director. Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia

and depositing the same with the Treasurer of the United States. Organization Order No. 121, was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue were transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-111. Right of entry for inspection.

The Boiler Inspector and his assistants shall have the right to enter, in the performance of his or their duties, at all reasonable hours, all premises on which a steam boiler or unfired pressure vessel is being installed, operated, or maintained, and it shall be unlawful for any person to deny admittance to any

such Inspector or assistant or to interfere with him or them in the performance of his or their duties.

(June 25, 1936, 49 Stat. 1919, ch. 802, § 10.)

Prior Codifications. — 1981 Ed., § 1-1011. 1973 Ed., § 1-711.

§ 2-112. Records.

The Boiler Inspector shall keep in the office of the Boiler Inspection Service all applications made, and a complete record thereof, as well as of all certificates issued. He shall also keep a complete record of each boiler and unfired pressure vessel inspected, and such other records and data pertaining to the Boiler Inspection Service as may be directed by the Mayor of the District of Columbia.

(June 25, 1936, 49 Stat. 1919, ch. 802, § 11.)

Prior Codifications. — 1981 Ed., § 1-1012. 1973 Ed., § 1-712.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-113. Use deemed nuisance; proceedings to abate.

The use of any steam boiler or unfired pressure vessel in violation of any of the prohibitions or requirements of this subchapter, or of the regulations promulgated under the authority hereof, shall constitute a common nuisance and the Corporation Counsel of the District of Columbia may maintain an action in the Superior Court of the District of Columbia, in the name of the District of Columbia, to abate and perpetually enjoin such nuisance.

(June 25, 1936, 49 Stat. 1919, ch. 802, § 12; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(c)(2).)

Prior Codifications. — 1981 Ed., § 1-1013. 1973 Ed., § 1-713.

§ 2-114. Filing information; penalties; separate offenses.

If any person shall violate any one or more of the provisions of this subchapter or of regulations duly promulgated hereunder, the Corporation Counsel of the District of Columbia, or any of his assistants, shall file an information in the Superior Court of the District of Columbia in the name of the District of Columbia, and upon conviction such persons shall be subject to

a fine not to exceed \$100 or to imprisonment for not more than 90 days, or both, for each and every violation thereof, and each violation shall constitute a separate offense. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this subchapter shall be pursuant to Chapter 18 of Title 2.

(June 25, 1936, 49 Stat. 1919, ch. 802, § 13; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Oct. 5, 1985, D.C. Law 6-42, § 454, 32 DCR 4450.)

Prior Codifications. — 1981 Ed., § 1-1014.
1973 Ed., § 1-714.

Legislative history of Law 6-42. — Law 6-42 was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs.

The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

§ 2-115. Authorization to make regulations and fix fees.

The Council of the District of Columbia is hereby authorized and empowered to make such regulations as it may deem proper to carry out the provisions of this subchapter and the Mayor of the District of Columbia is hereby authorized and empowered to fix the fees herein provided.

(June 25, 1936, 49 Stat. 1919, ch. 802, § 14.)

Prior Codifications. — 1981 Ed., § 1-1015.
1973 Ed., § 1-715.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(24) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-116. Repeal of inconsistent provisions; exception.

All laws or parts of laws relating to boiler inspection in conflict with the provisions of this subchapter are hereby repealed: Provided, that no provision of this subchapter shall be deemed to amend, alter, or repeal §§ 3-2701 to 3-2707 [repealed].

(June 25, 1936, 49 Stat. 1919, ch. 802, § 15.)

Prior Codifications. — 1981 Ed., § 1-1016.
1973 Ed., § 1-716.

§ 2-2408 § 3-2708, 2001 Ed. to the chapter
referred to in the text.

Editor's notes. — D.C. Law 6-42 added

§ 2-117. Severability.

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of said sections which can be given effect without the invalid provision or application, and to this end the provisions of said sections are declared to be severable.

(June 25, 1936, 49 Stat. 1919, ch. 802, § 16.)

Prior Codifications. — 1981 Ed., § 1-1017.

1973 Ed., § 1-717.

§ 2-118. Effective date; publication and enforcement of regulations and fees.

This subchapter shall become effective 6 months from the date of their approval. The regulations and schedule of fees herein provided for shall be promulgated by the Council of the District of Columbia and the Mayor of the District of Columbia, respectively, and printed in one or more of the daily newspapers published in the said District but shall not be enforced until 30 days after such publication or until December 25, 1936. Amendments to the regulations or new or additional schedules of fees, when and as the same may be adopted, shall likewise be printed in one or more of the daily newspapers published in the said District and no penalty for violation thereof or payment of new or additional fees prescribed shall be enforced until 30 days after such publication.

(June 25, 1936, 49 Stat. 1919, ch. 802, § 17.)

Prior Codifications. — 1981 Ed., § 1-1018.
1973 Ed., § 1-718.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter II. Inspectors Generally.

§ 2-131. Regulation of electricity; examination fees; exemption of public utilities.

The Council of the District of Columbia shall have power to make from time

to time such rules and regulations respecting the production, use and control of electricity for light, heat, and power purposes in the District of Columbia not inconsistent with existing laws, as in its judgment will afford safety and convenience to the public; and the Council is further authorized and empowered to prescribe such fees for the examination of the electrical wiring, machinery, and appliances in buildings as it may deem proper, to be paid to the Director of the Department of Finance and Revenue of the District of Columbia, and any such rules and regulations shall after promulgation have the effect and force of law: Provided, that nothing in §§ 2-131 to 2-133 contained shall apply to any electric company or electricity supplier facility or equipment engaged in the production, transmission, or distribution of electric current for public service or use.

(Apr. 26, 1904, 33 Stat. 306, ch. 1602, § 1; May 9, 2000, D.C. Law 13-107, § 301, 47 DCR 1091.)

Section references. — This section is referred to in § 2-132.

Prior Codifications. — 1981 Ed., § 1-1019.
1973 Ed., § 1-719.

Effect of amendments. — D.C. Law 13-107 substituted “any electric company or electricity supplier facility or equipment engaged in the production, transmission, or distribution” for “the power plants or buildings of incorporated companies engaged in the production and distribution”.

Legislative history of Law 13-107. — Law 13-107, the “Retail Electric Competition and Consumer Protection Act of 1999,” was introduced in Council and assigned Bill No. 13-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-256 and transmitted to both Houses of Congress for its review. D.C. Law 13-107 became effective on May 9, 2000.

References in text. — Pursuant to the Office of the Chief Financial Officer’s “Notice of Public Interest” published in the April 18, 1997, issue of the District of Columbia Register (44 DCR 2345) the Office of Tax and Revenue assumed all of the duties and functions previously performed by the Department of Finance and Revenue, as set forth in Commissioner’s Order 69-96, dated March 7, 1969. This action was made effective January 22, 1997, nunc pro tunc.

Editor’s notes. — Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of

all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 1, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner’s Order No. 69-96, dated March 7, 1969.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(25) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818,

§ 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-132. Electrical Engineer; electrical inspectors.

There is hereby established, under the direction of the Mayor of the District of Columbia, the office of Electrical Engineer, and the Mayor of said District is hereby authorized and directed to appoint an Electrical Engineer, and said Electrical Engineer shall be an expert electrician, possessing a thorough knowledge of the most modern methods for the production, use, and control of electricity and electrical appliances, construction, wiring, and insulation, as well as such executive ability and adaptability to office work as is requisite for the efficient management of the said office. And the Mayor is authorized and directed to appoint 2 electrical inspectors to assist in the work required by the authority of §§ 2-131 to 2-133, who shall perform such clerical duties as may be required by the Mayor.

(Apr. 26, 1904, 33 Stat. 307, ch. 1602, § 3.)

Section references. — This section is referred to in § 2-131.

Prior Codifications. — 1981 Ed., § 1-1020. 1973 Ed., § 1-721.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-133. Assistant Electrical Engineer.

The Assistant Electrical Engineer shall perform the duties of the Electrical Engineer in the absence or disability of the latter and shall have the same qualifications as to ability and technical knowledge as is required by law of the head of the Department.

(Mar. 2, 1911, 36 Stat. 981, ch. 192.)

Section references. — This section is referred to in §§ 2-131 and 2-132.

Prior Codifications. — 1981 Ed., § 1-1021. 1973 Ed., § 1-722.

§ 2-134. Appointment of Inspector of Plumbing; duty.

There shall be appointed by the Mayor of the District of Columbia an Inspector of Plumbing for said District, whose duty it shall be, to inspect all houses in course of erection, and pass upon the plumbing and sewerage of said houses.

(Jan. 25, 1881, 21 Stat. 318, ch. 27.)

Prior Codifications. — 1981 Ed., § 1-1022. 1973 Ed., § 1-724.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-135. Regulation of plumbing; licensing of plumbers and gas-fitters; noncompliance.

The Council of the District of Columbia and its successors are authorized and empowered to make and modify, and the Mayor of the District of Columbia and his successors are authorized and empowered to enforce, regulations governing plumbing, house drainage, and the ventilation, preservation, and maintenance in good order of house sewers and public sewers in the District of Columbia, and also regulations governing the examination, registration, and licensing of plumbers and the practice of the business of plumbing and gas-fitting in said District; and any person who shall neglect or refuse to comply with the requirements of the provisions of said regulations after 10 days notice of the specific thing required to be done thereunder, within the time limited by the Mayor for doing such work, or as the said time may be extended by said Mayor, shall upon conviction thereof be punishable by a fine of not more than \$200 for each and every such offense, or in default of payment of fine, to imprisonment not to exceed 30 days. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the regulations pursuant to Chapter 18 of Title 2. Adjudication of any infraction shall be pursuant to Chapter 18 of Title 2.

(Apr. 23, 1892, 27 Stat. 21, ch. 53, § 1; Mar. 3, 1893, 27 Stat. 543, ch. 199; Oct. 5, 1985, D.C. Law 6-42, § 480, 32 DCR 4450.)

Cross references. — Building restrictions and regulations, zoning regulations, see § 6-641.01 et seq.

Prior Codifications. — 1981 Ed., § 1-1023. 1973 Ed., § 1-725.

Legislative history of Law 6-42. — For

legislative history of D.C. Law 6-42, see Historical and Statutory Notes following § 2-114.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(26) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818,

§ 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

Where defendants did not call to attention of trial court the fact that information, which charged them with failure to comply with plumbing regulations of the District of Columbia after statutory notice, did not allege that notice required work to be completed within a specified time, and there was no showing of

prejudice, and defendants did not contend that notice did not adequately advise them of the time in which the work should be done, defendants could not complain of such omission on appeal. D.C. Code 1951, § 1-725. *Iskovitz v. District of Columbia*, 125 A.2d 519, 1956 D.C. App. LEXIS 236 (Cr.App. 1956).

§ 2-136. Plumbing permit fees; disposition of fees collected.

The Council of the District of Columbia and its successors, be, and they hereby are, authorized to establish, and the Mayor of the District of Columbia and his successors, be, and they hereby are, authorized to charge, a fee for each permit granted to connect any building, premises, or establishment with any sewer, water, or gas main, or other underground structure located in any public street, avenue, alley, road, highway, or space; and also to establish and charge a fee for each permit granted to make an excavation in any public street, avenue, alley, highway, road, or space for the purpose of repairing, altering, or extending any house sewer, water main, or gas main, or other underground construction. The fees authorized by this section shall be paid to the Director of the Department of Finance and Revenue of the District of Columbia and by him paid for each fiscal year into the Treasury of the United States to the credit of the General Fund of the District of Columbia.

(Apr. 23, 1892, 27 Stat. 21, ch. 53, § 3; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; Reorg. Plan No. 3 of 1967, § 402(27), 81 Stat. 952.)

Cross references. — Water and gas mains, service pipes, and sewer connections, duty to complete prior to construction of pavement and other permanent works, see § 9-401.03.

Prior Codifications. — 1981 Ed., § 1-1024. 1973 Ed., § 1-726.

References in text. — Pursuant to the Office of the Chief Financial Officer's "Notice of Public Interest" published in the April 18, 1997, issue of the District of Columbia Register (44 DCR 2345) the Office of Tax and Revenue assumed all of the duties and functions previ-

ously performed by the Department of Finance and Revenue, as set forth in Commissioner's Order 69-96, dated March 7, 1969. This action was made effective January 22, 1997, nunc pro tunc.

Editor's notes. — Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of

all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia

by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(27) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-137. Powers of Inspector of Plumbing.

The Inspector of Plumbing and his assistants shall be under the direction of said Mayor of the District of Columbia, and they are hereby empowered, accordingly, to inspect or cause to be inspected, all houses when in course of erection in said District, to see that the plumbing, drainage, and ventilation of sewers, and gas-fittings thereof conform to the regulations hereinbefore provided for; and also at any time, during reasonable hours, under like direction, on the application of the owner, or occupant, or the complaint under oath of any reputable citizen, to inspect or cause to be inspected any house in said District to examine the plumbing, drainage, and ventilation of sewers, and gas-fittings thereof, and generally to see that the regulations hereinbefore provided for are duly observed and enforced.

(Apr. 23, 1892, 27 Stat. 21, ch. 53, § 4; Mar. 3, 1893, 27 Stat. 543, ch. 199.)

Prior Codifications. — 1981 Ed., § 1-1025. 1973 Ed., § 1-727.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-138. Duties of Assistant Inspector of Buildings.

The principal Assistant Inspector of Buildings may perform and discharge any of the duties of the Inspector of Buildings when so directed by the Mayor of the District of Columbia.

(Mar. 3, 1899, 30 Stat. 1046, ch. 422.)

Prior Codifications. — 1981 Ed., § 1-1026. 1973 Ed., § 1-728.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-139. Inspector of Elevators and Fire Escapes.

One of the Assistant Inspectors of Buildings shall hereafter also perform the duties of Inspector of Elevators and Fire Escapes, without additional compensation.

(Aug. 7, 1894, 28 Stat. 244, ch. 232.)

Cross references. — Elevators, regulation of construction, repair and operation, see § 1-303.44.

Prior Codifications. — 1981 Ed., § 1-1027. 1973 Ed., § 1-729.

New implementing regulations. — New

implementing regulations: Pursuant to this section, the following new regulations were adopted in 1984: The "Apartment House Elevator Act of 1984" (D.C. Law 5-132, Mar. 13, 1985, 32 DCR 1717).

§ 2-140. Notice of attempted residential service.

(a) Within 90 days after April 11, 1986, the Mayor shall issue rules establishing a system under which agencies of the District of Columbia government which provide the services enumerated in this section to residents of the District of Columbia upon request shall notify the requestor that a service cannot be provided. The rules shall provide for notice pursuant to subsection (b) of this section and for notice to be left, if possible, (1) by being pushed under the internal door on the premises of the requestor, (2) by being pushed through a mail slot in the internal door on the premises of the requestor, or (3) as a last resort, in any manner on the premises of the requestor that offers a reasonable assurance that it will remain there until retrieved by the resident.

(b) The rules shall provide a system under which the following information

shall be made available to the residents: The name of the agency, the name of the individual attempting to provide the service, the date and time of the attempt to complete the requested service, the reason the service could not be delivered, and a telephone number that the resident can call to reschedule service.

(c) The services covered by this section shall include bulk trash collection, tree trimming, alley cleaning, leaf collection, inspections for alleged housing code violations, and any other service included in the rules issued pursuant to subsection (a) of this section.

(d) All rules issued pursuant to this section shall be transmitted to the Council for a 45-day review period.

(e) The Council may, by resolution, approve or disapprove the rules, in whole or in part, within the 45-day review period. If the Council, by resolution, does not approve or disapprove the regulations before the expiration of the 45-day review period, the regulations shall become effective at the expiration of the 45-day review period.

(Apr. 11, 1986, D.C. Law 6-103, § 2, 33 DCR 1157.)

Cross references. — Business improvement districts, collection and disbursement of taxes, see § 2-1215.15.

Washington Convention Center Authority, limitations on authority's powers, see § 10-1202.04.

Prior Codifications. — 1981 Ed., § 1-1028.

Legislative history of Law 6-103. — Law 6-103, the "District of Columbia Residence Doorknob Notice Act of 1985," was introduced

in Council and assigned Bill No. 6-94, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on January 14, 1986, and January 28, 1986, respectively. Approved without the signature of the Mayor on February 14, 1986, it was assigned Act No. 6-132 and transmitted to both Houses of Congress for its review.

CONTRACTS

CHAPTER 2. CONTRACTS.

Subchapter I. Bonding Requirement

PART A

General

Sec.

- 2-201.01. Bonds required from public contractors; amount; waiver.
- 2-201.02. Rights of laborers and materialmen to sue on payment bonds; prior notice of claim required in certain cases; time limitations; suit to be brought in name of District.
- 2-201.03. Certified copy of bond and contract to be furnished on application of laborers and materialmen; copy prima facie evidence of original.

PART B

Contracts Less Than a Certain Amount

- 2-201.11. Bond not required for contracts less than \$25,000.

Subchapter II. Retents

- 2-203.01. Retents.

Subchapter III. Government Insurance

- 2-205.01. Insurance of District property.
- 2-205.02. Payment of fire insurance.

Subchapter IV. Sewerage Agreements

- 2-207.01. Sewerage agreement with Maryland.
- 2-207.02. Sewerage agreement with Virginia.

Subchapter V. Reciprocal Police Mutual Aid Agreements

- 2-209.01. Reciprocal police mutual aid agreements — Authorized.
- 2-209.02. Reciprocal police mutual aid agreements — Required provisions.
- 2-209.03. Reciprocal police mutual aid agreements — Personnel benefits.
- 2-209.04. Reciprocal police mutual aid agreements — Supervision of non-District police in District; enforcement of District laws by non-District police.

Subchapter VI. [Reserved]

- 2-211.01. [Reserved].

Subchapter VII. Automated Data Processing

- 2-213.01. Automatic data processing — Definitions.
- 2-213.02. Automatic data processing — Duties of Mayor.
- 2-213.03. [Repealed].

Subchapter VII-A. Minority and Women-Owned Business Assessment

Sec.

- 2-214.01. Establishment of the Minority and Women-Owned Business Assessment Program.
- 2-214.02. Rules.

Subchapter VIII. Local Business Opportunity

- 2-215.01 to 2-215.11. [Repealed].

Subchapter IX. Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises

- 2-217.01 to 2-217.07. [Repealed].

Subchapter IX-A. Small, Local, and Disadvantaged Business Enterprise Development and Assistance

PART A

Short Title and Definitions

- 2-218.01. Short title.
- 2-218.02. Definitions.

PART B

Department of Small and Local Business Development

- 2-218.11. Establishment of the Department of Small and Local Business Development.
- 2-218.12. Director of the Department of Small and Local Business Development.
- 2-218.13. Organization and functions of the Department.
- 2-218.14. Transfers from the Office of Local Business Development to the Department of Small and Local Business Development.

PART C

District of Columbia Small and Local Business Opportunity Commission

- 2-218.21. District of Columbia Small and Local Business Opportunity Commission Establishment; composition; appointment; term of office; qualifications; vacancies; removal; compensation.
- 2-218.22. Functions of the Commission.
- 2-218.23. [Repealed].
- 2-218.24. Record keeping.
- 2-218.25. By-laws and internal rules.

GOVERNMENT ADMINISTRATION

PART D

Programs for Certified Business Enterprises

Subpart 1. Certified business enterprises

Sec.

- 2-218.31. Local business enterprises.
- 2-218.32. Small business enterprises.
- 2-218.33. Disadvantaged business enterprises.
- 2-218.34. [Repealed].
- 2-218.35. Resident-owned businesses.
- 2-218.36. Longtime resident businesses.
- 2-218.37. Local business enterprises with principal offices located in an enterprise zone.
- 2-218.38. Veteran-owned business enterprises.
- 2-218.39. Local manufacturing business enterprises.
- 2-218.39a. Joint venture business enterprises.

Subpart 2. Requirements of programs

- 2-218.41. Goals for District agencies with respect to contracting and procurement with small business enterprises.
- 2-218.42. Required programs, procedures, and policies to achieve contracting and procurement goals.
- 2-218.43. Bid and proposal preferences.
- 2-218.44. Mandatory set-asides of small contracts for small business enterprises.
- 2-218.45. Mandatory set-asides of contracts in the District of Columbia Supply Schedule for small business enterprises.
- 2-218.46. Performance and subcontracting requirements for construction and non-construction contracts; subcontracting plans.
- 2-218.47. Unbundling requirement.
- 2-218.48. Enforcement and penalties for willful breach of subcontracting plan.
- 2-218.49. Other procedures and programs.
- 2-218.49a. Equity and development participation.
- 2-218.50. Special requirements for government corporations.
- 2-218.51. Waiver of subcontracting requirements.
- 2-218.52. Enforcement mechanism against an agency.
- 2-218.53. Agency reporting requirements.
- 2-218.54. Department reporting requirements.
- 2-218.55. Regional governmental entities.

Subpart 3. Certification

- 2-218.61. Certificate of registration.
- 2-218.62. Provisional certification; self-certification prohibited.
- 2-218.63. Revocation of registration; challenges to registration; penalties.

Sec.

- 2-218.64. Identification of certified business enterprises in bids or proposals; false statements on certification; penalties.
- 2-218.65. Certification audits.

Subpart 3A. Stabilization and Job Creation Strategy

- 2-218.66. Services to certified business enterprise.
- 2-218.67. Establishment of the Volunteer Corp of Executives and Entrepreneurs.
- 2-218.68. Management and direction.
- 2-218.69. Procurement training and assistance.

Subpart 4. Triennial review and rulemaking

- 2-218.71. Triennial review of program and subchapter.
- 2-218.72. Rulemaking authority.

Subpart 5. Financial Assistance

- 2-218.75. Small Business Micro Loan Fund.
- 2-218.76. Commercial Revitalization Assistance Fund.

PART E

Repealers

- 2-218.81. [Reserved].
- 2-218.82. Repealers.

Subchapter X. First Source Employment

PART A

General Provisions

- 2-219.01. Definitions.
- 2-219.02. First Source Register created.
- 2-219.03. Employment agreements required.
- 2-219.03a. Special hiring agreements.
- 2-219.04. Reports.
- 2-219.04a. Modernization of First Source recordkeeping.
- 2-219.04b. Establishment of a workforce intermediary pilot program.
- 2-219.04c. Establishment of the District of Columbia Jobs Trust Fund.
- 2-219.05. Rules.

PART B

First Source Compliance

- 2-219.31. Short title.
- 2-219.32. Definitions.
- 2-219.33. Establishment of the Office of First Source Compliance.
- 2-219.34. Functions and duties.
- 2-219.35. Executive Director.

PART C

Stimulus Accountability

Sec.

- 2-219.51. Reporting requirements for entities receiving grants under the federal recovery act.
- 2-219.52. Requirements of the Mayor.

Subchapter X-A. Living Wage Requirements

- 2-220.01. Short title.
- 2-220.02. Definitions.
- 2-220.03. Living wage payment.
- 2-220.04. Contents of contract; notice to sub-contractors.
- 2-220.05. Exemptions.
- 2-220.06. Notice.
- 2-220.07. Records.
- 2-220.08. Enforcement.
- 2-220.09. Waiver.
- 2-220.10. Rules.
- 2-220.11. Applicability.

Subchapter XI. Quick Payment Provisions

- 2-221.01. Definitions.
- 2-221.02. Rules and regulations governing interest penalty payments by District agencies; computation and payment of penalties.
- 2-221.03. Interest penalty for failure to pay discounted price within specified period.

Sec.

- 2-221.04. Filing of claims; disputed payments.
- 2-221.05. Required reports.
- 2-221.06. Determination of receipt and payment dates; construction of rental contracts.

Subchapter XII. Employees of District Contractors and Instrumentality Whistleblower Protection.

- 2-223.01. Definitions.
- 2-223.02. Prohibitions.
- 2-223.03. Enforcement.
- 2-223.04. Disciplinary action; fine.
- 2-223.05. Election of remedies.
- 2-223.06. Posting of notice.
- 2-223.07. Applicability.

Subchapter XIII. Repealed and Expired Provisions

PART A

General

- 2-225.01 to 2-225.16. [Repealed].

PART B

Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises

- 2-225.21 to 2-225.27. [Expired].

Subchapter I. Bonding Requirement.

PART A.

GENERAL.

§ 2-201.01. Bonds required from public contractors; amount; waiver.

(a) Before any contract, exceeding \$25,000 in amount, for the construction, alteration, or repair of any public building or public work of the District of Columbia is awarded to any person, such person shall furnish to the District of Columbia the following bonds, which shall become binding upon the award of the contract to such person, who is hereinafter designated as "contractor": (1) A performance bond with a surety or sureties satisfactory to the Mayor of the District of Columbia, and in such amount as he shall deem adequate, for the protection of the District of Columbia; (2) a payment bond with a surety or sureties satisfactory to the Mayor for the protection of all persons supplying labor and material in the prosecution of the work provided for in said contract for the use of each such person. Whenever the total amount payable by the

terms of the contract shall be not more than \$1,000,000, the payment bond shall be in a sum equal to one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than \$1,000,000 and not more than \$5,000,000, the said payment bond shall be in a sum equal to 40 per centum of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than \$5,000,000 the payment bond shall be in the sum of \$2,500,000.

(b) Nothing in this section shall be construed to limit the authority of the Mayor to require a performance bond or other security in addition to those, or in cases other than the cases specified in subsection (a) of this section, or the authority of the Mayor to waive the requirement for performance and payment bonds in such cases as he shall determine.

(c) Any surety bond required by this section shall be executed by a surety certified by the U.S. Department of Treasury to do business pursuant to § 9305 of Title 31, United States Code, or a surety company licensed in the District of Columbia which meets the statutory capital and surplus requirements or as otherwise determined by the Mayor to be appropriate and necessary in the amount for underwriting such bonds.

(Aug. 3, 1968, 82 Stat. 628, Pub. L. 90-455, § 1; Aug. 14, 1973, 87 Stat. 305, Pub. L. 93-89, title V, § 501; Mar. 29, 1977, D.C. Law 1-95, § 11(a), 23 DCR 9532b; July 23, 1994, D.C. Law 10-140, § 3, 41 DCR 3053; Apr. 12, 2000, D.C. Law 13-91, § 115, 47 DCR 520; Oct. 4, 2000, D.C. Law 13-169, § 5, 47 DCR 5846.)

Prior Codifications. — 1981 Ed., § 1-1104. 1973 Ed., § 1-804a.

Effect of amendments. — D.C. Law 13-91, in subsec. (b), substituted “Local Business Opportunity Commission” for “Minority Business Opportunity Commission”.

D.C. Law 13-169, in subsec. (b), substituted “the authority of the Mayor to” for “he, through the District of Columbia Local Business Opportunity Commission, may”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 5 of Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Temporary Amendment Act of 2000 (D.C. Law 13-216, Apr. 3, 2001, law notification 48 DCR 3458).

Emergency legislation. — For temporary (90-day) amendment of section, see § 5 of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

Legislative history of Law 1-95. — For legislative history of D.C. Law 1-95, see Historical and Statutory Notes following § 2-215.01.

Legislative history of Law 10-140. — Law 10-140, the “Bond Surety Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-358, which was referred to the

Committee on Economic Development. The Bill was adopted on first and second readings on April 12, 1994, and May 3, 1994, respectively. Signed by the Mayor on May 18, 1994, it was assigned Act No. 10-245 and transmitted to both Houses of Congress for its review. D.C. Law 10-140 became effective on July 23, 1994.

Legislative history of Law 13-91. — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Legislative history of Law 13-169. — Law 13-169, the “Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-241, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on April 4, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-373 and transmitted to both Houses of Congress for

its review. D.C. Law 13-169 became effective on October 4, 2000.

Editor's notes. — Definitions applicable: Section 6 of the Act of August 3, 1968, Pub. L. 90-445, provided that, as used in that Act, the term "person" and the masculine pronoun would include all persons whether individuals, associations, copartnerships, or corporations.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

In general.

Negligence or fault.

Notice requirements.

Subcontractors.

Sufficiency of evidence.

Sureties or guarantors.

In general.

District of Columbia's duty to enforce Little Miller Act does not arise from its status as party to construction contract, but rather, from its status as government charged with enforcing the law; because duty arises from noncontractual source, proper action for breach of duty can lie only in tort. D.C. Code 1981, §§ 1-1104, 1-1104(a). *District of Columbia v. Campbell*, 580 A.2d 1295, 1990 D.C. App. LEXIS 238 (1990).

Negligence or fault.

Where provision of sewer construction contract and performance bond required the contractor and its insurer to indemnify the District of Columbia only for losses sustained as a result of negligence on the part of the contractor, the District could not recover for damages resulting either from its own negligence or from acts or omissions in which it was concurrently negligent. *District of Columbia v. C. F. & B., Inc.*, 442 F. Supp. 251, 1977 U.S. Dist. LEXIS 12819 (1977).

Notice requirements.

Filing of subcontractor's complaint against District of Columbia under Little Miller Act did not satisfy statutory notice requirement for actions against the District. D.C. Code 1981, §§ 1-1104, 12-309. *District of Columbia v. Campbell*, 580 A.2d 1295, 1990 D.C. App. LEXIS 238 (1990).

District of Columbia, by failing to require general contractor to post payment bond in connection with renovation project, was not

aware of both breach of duty and injury, as required to exempt subcontractor from statutory notice requirements when it filed claim against District under Little Miller Act; although District was aware that it did not require general contractor to post bond, it could not have been aware of injury to subcontractor occurring when general contractor failed to pay it. D.C. Code 1981, §§ 1-1104, 12-309. *District of Columbia v. Campbell*, 580 A.2d 1295, 1990 D.C. App. LEXIS 238 (1990).

Subcontractor's claim against District of Columbia under Little Miller Act, based on theory that District failed to require general contractor to post performance bond, was for unliquidated, rather than liquidated damages, making statutory notice requirements for claims against District applicable; although amount of performance bond was known, damages claimed by subcontractor caused by contractor's failure to pay varied throughout course of litigation. D.C. Code 1981, §§ 1-1104, 12-309. *District of Columbia v. Campbell*, 580 A.2d 1295, 1990 D.C. App. LEXIS 238 (1990).

Statutory notice requirements for filing claims against District of Columbia did not apply to subcontractor's contract claim against District based on District's failure to require general contractor to post payment bond, as required by Little Miller Act. D.C. Code 1981, §§ 1-1104, 12-309. *District of Columbia v. Campbell*, 580 A.2d 1295, 1990 D.C. App. LEXIS 238 (1990).

Subcontractors.

District of Columbia, as promisee under provision of construction contract requiring general contractor to post payment bond, could not be held liable to subcontractor under third-party beneficiary theory for its failure to insist that general contractor obtain bond; even assuming that subcontractor was intended beneficiary of contractual payment bond provision, it could only maintain claim against breaching

promisor. D.C. Code 1981, §§ 1-1104, 1-1104(a). District of Columbia v. Campbell, 580 A.2d 1295, 1990 D.C. App. LEXIS 238 (1990).

Subcontractor was entitled to claims against prime contractor and surety on performance bond for preparation of a water damage estimate and for storage of materials, because those costs were cognizable under statute governing rights of laborers and materialmen to sue on payment bonds, and even though amended complaint did not specify costs of preparing the estimate or of storing material, because the deposition of subcontractor's president, taken four months prior to trial, notified surety of its intentions to seek damages for those items, so that surety's ability to defend against those claims was not prejudiced. D.C. Code 1973, § 1-804b. Hartford Acci. & Indem. Co. v. District of Columbia, 441 A.2d 969, 1982 D.C. App. LEXIS 279 (1982).

The District has no immunity from suit by a subcontractor where District officials fail to comply with this section by failing to require the prime contractor to post a payment bond. Campbell v. Cumbari Assocs., 115 WLR 1729 (Super. Ct. 1987).

Sufficiency of evidence.

Evidence, in suit by subcontractor against prime contractor and surety on performance

bond, was insufficient to prove out-of-pocket extended unabsorbed overhead with respect to surety, and thus trial court properly refused to award extended overhead damages against surety on that basis, not on any belief that overhead delay damages are not recoverable from a surety. Hartford Acci. & Indem. Co. v. District of Columbia, 441 A.2d 969, 1982 D.C. App. LEXIS 279 (1982).

Sureties or guarantors.

When elements necessary for successful application of subrogation principle exist, surety is substituted for owner with respect to rights which owner has against contractor as result of latter's failure to perform. District of Columbia v. Aetna Ins. Co., 462 A.2d 428, 1983 D.C. App. LEXIS 402 (1983).

Where only claimants to monies held by government agency are surety and defaulting contractor, surety who has performed under public works performance bond agreement, upon full satisfaction of its surety obligation, is subrogated to all rights and remedies which government might have had against principal had government been forced to complete project itself; among these remedies is common-law right of setoff. District of Columbia v. Aetna Ins. Co., 462 A.2d 428, 1983 D.C. App. LEXIS 402 (1983).

§ 2-201.02. Rights of laborers and materialmen to sue on payment bonds; prior notice of claim required in certain cases; time limitations; suit to be brought in name of District.

(a) Every person who has furnished labor or material in the prosecution of the work provided for in such contract, in respect of which a payment bond is furnished under this subchapter and who has not been paid in full therefor before the expiration of a period of 90 days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action to final judgment and execution for the sum or sums justly due him: Provided, that any person having direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which such person did or performed the last of the labor, or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by mailing the same by registered mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office

or conducts his business, or his residence, or in any manner in which the United States Marshal for the District of Columbia is authorized by law to serve summons.

(b) Every suit instituted under this section shall be brought in the name of the District of Columbia for the use of the person suing, in the Superior Court of the District of Columbia, irrespective of the amount in controversy in such suit, but no such suit shall be commenced after the expiration of 1 year after the day on which the last of the labor was performed or material was supplied by him. The District of Columbia shall not be liable for the payment of any costs or expenses of any such suit.

(Aug. 3, 1968, 82 Stat. 628, Pub. L. 90-455, § 2; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(c)(3).)

Cross references. — Superior Court of the District of Columbia, jurisdiction, see § 11-921.

Prior Codifications. — 1981 Ed., § 1-1105. 1973 Ed., § 1-804b.

Editor's notes. — Definitions applicable: See Historical and Statutory Notes following § 2-201.01.

CASE NOTES

ANALYSIS

In general.
Jurisdiction.

In general.

Subcontractor was entitled to claims against prime contractor and surety on performance bond for preparation of a water damage estimate and for storage of materials, because those costs were cognizable under statute governing rights of laborers and materialmen to sue on payment bonds, and even though amended complaint did not specify costs of preparing the estimate or of storing material, because the deposition of subcontractor's president, taken four months prior to trial, notified surety of its intentions to seek damages for those items, so that surety's ability to defend against those claims was not prejudiced. D.C. Code 1973, § 1-804b. *Hartford Acci. & Indem. Co. v. District of Columbia*, 441 A.2d 969, 1982 D.C. App. LEXIS 279 (1982).

Surety which secured bond furnished by prime contractor to protect persons supplying labor and material under the prime contract was liable for damages to subcontractor resulting from a delay in performance, because the expenses incurred by the subcontractor as a result of the delay were within the clear purpose of statute governing right to sue on payment bonds. D.C. Code 1973, § 1-804b. *Hartford Acci. & Indem. Co. v. District of Columbia*, 441 A.2d 969, 1982 D.C. App. LEXIS 279 (1982).

Jurisdiction.

District of Columbia code provision, stating that suits brought under Little Miller Act

"shall" be brought in District of Columbia court, although an act of Congress, did not expressly alter normal federal jurisdictional rules and thus District of Columbia code provision did not defeat federal diversity jurisdiction in action by subcontractor for payment on payment bond under District of Columbia's Little Miller Act. 18 U.S.C. §§ 1332, 1332(c), 1441; D.C. Code 1981, § 1-1105. *District of Columbia ex rel. American Combustion, Inc. v. Transamerica Ins. Co.*, 797 F.2d 1041, 1986 U.S. App. LEXIS 27725 (C.A.D.C. 1986).

District of Columbia which had no pecuniary interest in lawsuit, was not involved in its prosecution, and was protected from liability was a nominal party in action brought pursuant to District of Columbia's Little Miller Act by subcontractor seeking payment pursuant to payment bond and thus District of Columbia's presence in action did not defeat diversity jurisdiction. D.C. Code 1981, § 1-1105; *Fed.R.Civ.Proc. Rules* 17, 17(a), 17 note, 18 U.S.C.; 18 U.S.C. § 1332. *District of Columbia ex rel. American Combustion, Inc. v. Transamerica Ins. Co.*, 797 F.2d 1041, 1986 U.S. App. LEXIS 27725 (C.A.D.C. 1986).

District of Columbia statute providing that every materialman suit should be brought in Superior Court of District of Columbia did not deprive district court of diversity jurisdiction in such cases nor render such cases nonremovable once they were brought in Superior Court of District of Columbia. D.C. Code §§ 1-804a, 1-804b(a, b), 11-503; 18 U.S.C. §§ 1331, 1363, 1441(a), 1445. *District of Columbia use of John Driggs Co. v. Ranger Constr. Co.*, 394 F. Supp. 801, 1974 U.S. Dist. LEXIS 11346 (1974).

§ 2-201.03. Certified copy of bond and contract to be furnished on application of laborers and materialmen; copy prima facie evidence of original.

The Mayor is authorized and directed to furnish, to any person making application therefor who submits an affidavit that he has supplied labor or materials for such work and payment therefor has not been made or that he is being sued on any such bond, a certified copy of such bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution, and delivery of the original. Applicants shall pay for such certified copies such fees as the Mayor fixes to cover the cost of preparation thereof.

(Aug. 3, 1968, 82 Stat. 628, Pub. L. 90-455, § 3.)

Prior Codifications. — 1981 Ed., § 1-1106.
1973 Ed., § 1-804c.

Editor's notes. — Definitions applicable: See Historical and Statutory Notes following § 2-201.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

PART B.

CONTRACTS LESS THAN A CERTAIN AMOUNT.

§ 2-201.11. Bond not required for contracts less than \$25,000.

In all cases where the Mayor of the District of Columbia contracts for work or material involving a sum not exceeding \$25,000 it shall not be necessary for said Mayor to require a bond with said contract.

(June 28, 1906, 34 Stat. 546, ch. 3575; June 26, 1912, 37 Stat. 168, ch. 182; Aug. 3, 1968, 82 Stat. 629, Pub. L. 90-455, § 4; Aug. 14, 1973, 87 Stat. 305, Pub. L. 93-89, title V, § 501; Mar. 29, 1977, D.C. Law 1-95, § 11(b), 23 DCR 9532b.)

Prior Codifications. — 1981 Ed., § 1-1107.
1973 Ed., § 1-805.

Legislative history of Law 1-95. — For legislative history of D.C. Law 1-95, see Historical and Statutory Notes following § 2-215.01.

Editor's notes. — Definitions applicable: See Historical and Statutory Notes following § 2-201.01.

Change in Government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter II. Retents.

§ 2-203.01. Retents.

On all contracts made by the District of Columbia for construction work there shall be withheld, until completion and acceptance of the work, a retent of 10 per centum of the total amount of any payments made thereunder as a guaranty fund that the terms of such contracts shall be strictly and faithfully performed: Provided, however, that whenever 50 per centum of the work required under a contract for construction work has been completed and payments therefor have been made, the Mayor of the District of Columbia, in his sole discretion, may authorize subsequent payments to be made to the contractor without withholding from such subsequent payments 10 per centum thereof as required by this section, or the said Mayor may authorize retention from such subsequent payments of less than 10 per centum thereof, and whenever the work is substantially complete, the Mayor, if he considers the amount retained to be in excess of the amount adequate for the protection of the District of Columbia, at his discretion may release to the contractor all or a portion of such excess amount; and the said Mayor in his sole discretion, may further authorize payment in full, including retained percentages, for each separate building or public work on which the price is stated separately in the contract upon completion and acceptance of such building or work.

(Mar. 3, 1887, 24 Stat. 501, ch. 355; Mar. 31, 1906, 34 Stat. 94, ch. 1356, § 1; Aug. 3, 1949, 63 Stat. 493, ch. 386; Aug. 3, 1968, 82 Stat. 629, Pub. L. 90-455, § 5.)

Prior Codifications. — 1981 Ed., § 1-1109. 1973 Ed., § 1-807.

Editor's notes. — Definitions applicable: See Historical and Statutory Notes following § 2-201.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

In general.
Interest.

In general.

Where only questions of law were involved which were (1) whether retained 10% by District of Columbia was limited to insuring only that actual work of street and sewer construction be completed, or whether it also covered restoration of damaged property, and (2) whether interest should be allowed on sum retained in excess of 10%, decision of District Contract Appeals Board was not final and binding on the parties on such questions notwithstanding provision of contract that decision of such board should be final in view of statute providing that no government contract should contain a provision making final on question of law decision of any administrative official or board, and hence contractor could maintain action to recover the money withheld. D.C. Code 1951, § 1-807; 41 U.S.C. §§ 321, 322. *Kenny Const. Co. v. District of Columbia*, 262 F.2d 926, 1959 U.S. App. LEXIS 5038 (C.A.D.C. 1959).

The word "work" in provision of contract for street and sewer construction authorizing retention of 10% until "completion and acceptance of the work" included all tasks contractually required of the contractor and was not limited to construction of project itself, and hence included contractual requirement of restoration of damaged property. D.C. Code 1951, § 1-807. *Kenny Const. Co. v. District of Colum-*

bia, 262 F.2d 926, 1959 U.S. App. LEXIS 5038 (C.A.D.C. 1959).

Under contract for street and sewer construction which authorized District of Columbia to retain 10% until "completion and acceptance of the work", the 10% withheld was to insure not only the completion of the actual work but also the restoration of property damaged by act or omission of contractor, as against contention that liability insurance and performance bond constituted the expressly designated protection to District under the contract and District could not enlarge such coverage by superimposing upon them, without contractor's consent, the coverage of withheld money, since contract gave District the triple protection of which contractor complained. D.C. Code 1951, § 1-807. *Kenny Const. Co. v. District of Columbia*, 262 F.2d 926, 1959 U.S. App. LEXIS 5038 (C.A.D.C. 1959).

Interest.

Where District of Columbia Contract Appeals Board ordered the District to pay as of certain date the amount in excess of 10% retained under contract for street and sewer construction, contractor was entitled to interest from such date to date of actual payment even though contract did not authorize payment of interest on withheld payments, since the sum required to be paid back was in excess of the 10% authorized to be retained and should not have been withheld at all. D.C. Code 1951, § 1-807. *Kenny Const. Co. v. District of Columbia*, 262 F.2d 926, 1959 U.S. App. LEXIS 5038 (C.A.D.C. 1959).

*Subchapter III. Government Insurance.***§ 2-205.01. Insurance of District property.**

After February 25, 1885, property belonging to the District of Columbia may be insured in advance for periods of 5 years or less.

(Feb. 25, 1885, 23 Stat. 313, ch. 145.)

Prior Codifications. — 1981 Ed., § 1-1118. 1973 Ed., § 1-816.

§ 2-205.02. Payment of fire insurance.

No District of Columbia appropriation shall be used for the payment of premiums or other cost of fire insurance.

(June 28, 1944, 58 Stat. 533, ch. 300, § 12.)

Prior Codifications. — 1981 Ed., § 1-1119. 1973 Ed., § 1-816a.

Subchapter IV. Sewerage Agreements.

§ 2-207.01. Sewerage agreement with Maryland.

For the protection of streams flowing through United States government parks and reservations in the District of Columbia from pollution by sewage discharged therein from sewerage systems of Maryland towns and villages bordering said District, the Mayor is authorized to enter into an agreement with the proper authorities of the State of Maryland for the drainage of such sewerage systems into and through the sewerage system of the District of Columbia; and the said Mayor is further authorized to permit connections of Maryland sewers with the District of Columbia sewerage system at or near the District line whenever, in his judgment, the sanitary conditions of streams flowing into and through such United States government parks and reservations in the District of Columbia are such as to demand the elimination of such pollution: Provided, that all cost of construction of such sewers to and connection with the sewerage system of the District of Columbia shall be paid by the proper authorities of the State of Maryland, and that said State shall enter into such agreement with the Mayor and shall guarantee the protection of the District of Columbia sewerage system from unauthorized connections thereto, and shall reimburse the District of Columbia for the actual cost of pumping and handling such sewerage by annual payments for such service as determined by the Mayor in such agreement; all such sums collected therefor to be paid into the Treasury of the United States through the Director of the Department of Finance and Revenue to the credit of the District of Columbia.

(Sept. 1, 1916, 39 Stat. 717, ch. 433, § 9.)

Cross references. — Sanitary sewage works, charges to users, see § 34-2132.

Water pollution control, see § 8-103.01 et seq.

Prior Codifications. — 1981 Ed., § 1-1120. 1973 Ed., § 1-817.

References in text. — Pursuant to the Office of the Chief Financial Officer's "Notice of Public Interest" published in the April 18, 1997, issue of the District of Columbia Register (44 DCR 2345) the Office of Tax and Revenue assumed all of the duties and functions previously performed by the Department of Finance and Revenue, as set forth in Commissioner's Order 69-96, dated March 7, 1969. This action was made effective January 22, 1997, nunc pro tunc.

Editor's notes. — Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorgani-

zation Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred

to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue were transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-207.02. Sewerage agreement with Virginia.

(a) For the protection of the Potomac River and its tributary streams within the metropolitan area of the District of Columbia from pollution by sewage or other liquid wastes originating in Virginia, and for the protection of the health of the residents of the District of Columbia and of the employees of the United States government residing in such metropolitan area, the Mayor of the District of Columbia is authorized in his discretion, from time to time, to enter into and renew agreements, for such periods as he deems advisable, with the proper authorities of the Commonwealth of Virginia, including county, municipal, and other governmental units thereof, for the drainage of such sewage or other liquid wastes into the sewerage system of the District of Columbia for treatment and disposal: Provided, that to the extent and in the manner determined by such agreements, the proper authorities of such Commonwealth, county, municipal, or other governmental units shall pay part or all of the costs of construction, expansion, relocation, replacement, repair, maintenance, and operation (including administrative expenses, interest, and amortization) of such sewers and other facilities as may be necessary or appropriate to convey and treat such sewage or other liquid wastes either separately or with sewage or other liquid wastes originating in said District or elsewhere. All payments or reimbursements made to the District of Columbia pursuant to this section and the agreements entered into hereunder shall be made to the Mayor and shall be deposited in the Treasury of the United States to the credit of the District of Columbia Sewage Works Fund.

(b) As used in this section, the terms "Mayor of the District of Columbia" and "Mayor" mean the Mayor of the District of Columbia or his designated agents.

(Aug. 21, 1958, 72 Stat. 702, Pub. L. 85-703, §§ 1, 2.)

Cross references. — Sanitary sewage works, charges to users, see § 34-2132.

Water pollution, control of, see § 8-103.01 et seq.

Prior Codifications. — 1981 Ed., § 1-1122. 1973 Ed., § 1-817c.

Change in Government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter V. Reciprocal Police Mutual Aid Agreements.

§ 2-209.01. Reciprocal police mutual aid agreements — Authorized.

The Mayor of the District of Columbia is hereby authorized in his discretion to enter into and renew reciprocal agreements, for such period as he deems advisable, with any county, municipality, or other governmental unit in the States of Maryland and Virginia, in order to establish and carry into effect a plan to provide mutual aid, through the furnishing of policemen and other agents and employees, together with all necessary equipment.

(Oct. 17, 1968, 82 Stat. 1150, Pub. L. 90-587, § 1; July 29, 1970, 84 Stat. 667, Pub. L. 91-358, title VIII, § 801.)

Prior Codifications. — 1981 Ed., § 1-1125. 1973 Ed., § 1-820.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-209.02. Reciprocal police mutual aid agreements — Required provisions.

The District of Columbia shall not enter into any such agreement unless the agreement provides that each of the parties to such agreement shall:

(1) Waive any and all claims against all the other parties thereto which may arise out of their activities outside their respective jurisdictions under such agreement;

(2) Indemnify and save harmless the other parties to such agreement from all claims by third parties for property damage or personal injury which may arise out of the activities of the other parties to such agreement outside their respective jurisdictions under such agreement.

(Oct. 17, 1968, 82 Stat. 1150, Pub. L. 90-587, § 2.)

Prior Codifications. — 1981 Ed., § 1-1126. 1973 Ed., § 1-821.

§ 2-209.03. Reciprocal police mutual aid agreements — Personnel benefits.

The policemen and other officers, agents, and employees of the District, when acting hereunder or under other lawful authority beyond the territorial limits of the District, shall have all of the pension, relief, disability, workmen's compensation, and other benefits enjoyed by them while performing their respective duties within the District of Columbia.

(Oct. 17, 1968, 82 Stat. 1150, Pub. L. 90-587, § 3.)

Prior Codifications. — 1981 Ed., § 1-1127. 1973 Ed., § 1-822.

§ 2-209.04. Reciprocal police mutual aid agreements — Supervision of non-District police in District; enforcement of District laws by non-District police.

The Mayor of the District of Columbia shall be responsible for directing the activities of all policemen and other officers and agents coming into the District pursuant to any such reciprocal agreement, and the Mayor is empowered to authorize all policemen and other officers and agents from outside the District to enforce the laws applicable in the District to the same extent as if they were duly authorized officers and members of the Metropolitan Police force of the District of Columbia.

(Oct. 17, 1968, 82 Stat. 1150, Pub. L. 90-587, § 4.)

Prior Codifications. — 1981 Ed., § 1-1128. 1973 Ed., § 1-823.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter VI. [Reserved].

§ 2-211.01. [Reserved].

Subchapter VII. Automated Data Processing.

§ 2-213.01. Automatic data processing — Definitions.

For the purposes of this subchapter, the term:

(1) "Automatic data processing" means the use of computers for the dissemination, storage, retrieval, and reporting of information associated with an administrative or managerial function.

(2) "Automated data system" means a set of logically related computer programs designed to accomplish specific objectives or functions.

(3) "Computer" means an electromechanical device capable of accepting information and data, performing logical and arithmetical operations, and reporting the results.

(4) "Hardware" means input and output devices, arithmetic and control circuits, and memory devices.

(5) "Information systems" means a single network or networks of steps for processing information that is associated with a particular operation or a set of related operations.

(6) "Information systems technology" means the applied science associated with the development of networks for the processing of information.

(7) "Software" means the procedures, instructions, code sets, assemblers, compilers, and all other associated supporting processes required to run a computer program on the equipment itself.

(Mar. 15, 1985, D.C. Law 5-168, § 2, 32 DCR 721.)

Prior Codifications. — 1981 Ed., § 1-1134.

Emergency legislation. — For temporary establishment of an Office of the Chief Technology Officer, see § 1412 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and see § 1412 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 2101 of D.C. Act 12-564 provided for the application of the act.

Legislative history of Law 5-168. — Law 5-168, the "District of Columbia Automatic Data Processing Act of 1984," was introduced in Council and assigned Bill No. 5-330, which was

referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1984 and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-233 and transmitted to both Houses of Congress for its review.

Editor's notes. — Establishment of Office of the Chief Technology Officer: Section 1812 of D.C. Law 12-175 established, in the Executive Branch of the government of the District of Columbia, an Office of the Chief Technology Officer under the supervision of a Chief Technology Officer, who shall carry out the functions and authorities assigned to that office.

§ 2-213.02. Automatic data processing — Duties of Mayor.

(a) The Mayor shall:

(1) Provide direction and coordination for the District's automated data systems, information systems, automated data and word processing resources, and telecommunications systems;

(2) Reduce the duplication of data collection, storage, and reporting;

(3) Ensure, to the maximum extent possible, compatibility of all new acquisitions of automatic data processing related, word processing, and telecommunications equipment with existing equipment and information systems;

(4) Remain abreast of new developments in automatic data processing, word processing, telecommunications, and information systems technology, and the extent to which these developments can benefit the needs of the District;

(5) Perform evaluations and feasibility studies prior to the District's adoption of new information systems technology to ascertain the costs and benefits that will accrue to the District; and

(6) Establish and maintain an inventory of all data and word processing

and telecommunications equipment, including hardware, software, and appropriate documentation for all major information systems.

(b) The Mayor shall establish, maintain, and provide to all departments and agencies under the Mayor:

(1) Consistent policies, principles, standards, and guidelines for the acquisition, utilization, operation, and maintenance of automatic data processing, word processing, and telecommunications equipment and related information systems technology;

(2) Consistent policies, principles, standards, and guidelines for data and information collection, storage and reporting that facilitate the sharing of information among agencies and reduce duplicative efforts;

(3) Scientific and technical advisory services relating to automatic data processing, word processing, telecommunications, automatic data systems, and information systems, including the development of specifications for and the selection of all hardware, software, and the types and configurations of computers and related equipment that are needed;

(4) Consistent policies, principles, standards, and guidelines for the recruitment, classification, and training of persons in positions associated with automatic data processing and information systems technology;

(5) A multiyear comprehensive plan for meeting the needs of the District government regarding automatic data processing and information systems technology;

(6) Consistent policies, principles, standards, and guidelines for the security, protection, and preservation of automated data systems, automatic data processing equipment, and information systems, including contingency or backup plans for disaster and emergency recovery;

(7) Consistent policies, principles, standards, and guidelines for ensuring compatibility in the acquisition of automatic data processing related resources with existing resources and data systems and information systems; and

(8) Consistent standards and requirements for agency audits of all major automated data systems and information systems.

(c) Repealed.

(Mar. 15, 1985, D.C. Law 5-168, § 4, 32 DCR 721; Apr. 12, 1997, D.C. Law 11-259, § 305(a), 44 DCR 1423.)

Prior Codifications. — 1981 Ed., § 1-1135.

Legislative history of Law 5-168. — For legislative history of D.C. Law 5-168, see Historical and Statutory Notes following § 2-213.01.

Legislative history of Law 11-259. — Law 11-259, the “Procurement Reform Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-705, which was referred to the Committee on Government Operation. The

Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 9, 1997.

Delegation of Authority. — Delegation of authority pursuant to Law 5-168, see Mayor’s Order 86-150, September 1, 1986.

§ 2-213.03. Automatic data processing — Delegation of certain Mayoral authority. [Repealed].

Repealed.

(Mar. 15, 1985, D.C. Law 5-168, § 4, 32 DCR 721; Apr. 12, 1997, D.C. Law 11-259, § 305(b), 44 DCR 1423.)

Legislative history of Law 11-259. — For torical and Statutory Notes following § 2-213.02. legislative history of D.C. Law 11-259, see His-

Subchapter VII-A. Minority and Women-Owned Business Assessment.

§ 2-214.01. Establishment of the Minority and Women-Owned Business Assessment Program.

(a) There is established the Minority and Women-Owned Business Assessment Program (“Program”) within the Department of Small and Local Business Development (“Department”). The Program shall:

(1) Analyze the current state of businesses owned or controlled by minorities or women qualifying as Certified Business Enterprises (“CBE”) as that term is defined in subchapter IX-A of this chapter [§ 2-218.01 et seq.], including counting the number of businesses that have applied for CBE certification and the number that have been certified as CBEs since the inception of the CBE program;

(2) Record and track the number of businesses owned or controlled by minorities or women that have been awarded government contracts under the procurement process utilized by the District; and

(3) Assess the findings and investigate and recommend ways to encourage businesses owned or controlled by minorities or women to compete in the procurement process utilized by the District.

(b) The Department shall submit the findings and recommendations of the Program to the Chairman of the Council’s Committee on Economic Development in the form of a report or reports. Specific steps for implementing the recommendations shall accompany the report or reports.

(c) For the purposes of this subchapter, the term “minority” shall include Asian, Pacific Islander, African American or Black, Native American or Native Hawaiian, and Hispanic or Latino.

(Mar. 26, 2008, D.C. Law 17-136, § 2, 55 DCR 1685.)

Legislative history of Law 17-136. — Law 17-136, the “Minority and Women-Owned Business Assessment Act of 2008”, was introduced in Council and assigned Bill No. 17-518 which was referred to the Committee on Economic Development. The Bill was adopted on first and

second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on February 5, 2008, it was assigned Act No. 17-287 and transmitted to both Houses of Congress for its review. D.C. Law 17-136 became effective on March 26, 2008.

§ 2-214.02. Rules.

Within 90 days of March 26, 2008, the Mayor, pursuant to subchapter I of Chapter 5 of this title, shall issue rules to implement the provisions of this subchapter. The proposed rules shall be submitted by the Mayor to the Council for a 45-day period of review, excluding weekends, holidays, and days of Council recess. If the Council does not approve or disapprove the rules within the 45-day review period, in whole or in part, by resolution, the rules shall be deemed approved.

(Mar. 26, 2008, D.C. Law 17-136, § 3, 55 DCR 1685.)

Legislative history of Law 17-136. — For Law 17-136, see notes following § 2-214.01.

Subchapter VIII. Local Business Opportunity.

§ 2-215.01. Findings. [Repealed].

Repealed.

(Mar. 29, 1977, D.C. Law 1-95, § 2, 23 DCR 9532b; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-1141. 1973 Ed., § 1-851.

Legislative history of Law 1-95. — Law 1-95 was introduced in Council and assigned Bill No. 1-323, which was referred to the Committee on Employment and Economic Development. The Bill was adopted on first and second readings on September 15, 1976 and October 12, 1976, respectively. Signed by the Mayor on November 15, 1976, it was assigned Act No. 1-174 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 2-201.01.

Mayor's Orders. — Establishment of Department of Human Rights and Minority Business Development: See Mayor's Order 89-247, November 1, 1989.

Redesignation of the Minority Business Opportunity Commission, the Department of Human Rights and Minority Business Development, and the Minority Business Development Administration: See Mayor's Order 97-169, September 25, 1997 (44 DCR 5863).

§ 2-215.02. Definitions. [Repealed].

Repealed.

(Mar. 29, 1977, D.C. Law 1-95, § 3, 23 DCR 9532b; Sept. 13, 1980, D.C. Law 3-91, § 2, 27 DCR 3280; Mar. 9, 1983, D.C. Law 4-167, § 2(a), 29 DCR 4983; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-1142. 1973 Ed., § 1-852.

Legislative history of Law 1-95. — For legislative history of D.C. Law 1-95, see Historical and Statutory Notes following § 2-215.01.

Legislative history of Law 3-91. — Law 3-91 was introduced in Council and assigned Bill No. 3-252, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second read-

ings on June 3, 1980 and June 17, 1980, respectively. Signed by the Mayor on July 9, 1980, it was assigned Act No. 3-213 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-167. — For legislative history of D.C. Law 4-167, see Historical and Statutory Notes following § 2-215.10.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 2-201.01.

§ 2-215.03. District of Columbia Local Business Opportunity Commission — Established; composition; appointment; term of office; qualifications; vacancies; removal; oath of office; compensation. [Repealed].

Repealed.

(Mar. 29, 1977, D.C. Law 1-95, § 4, 23 DCR 9532b; Sept. 13, 1980, D.C. Law 3-91, § 3, 27 DCR 3280; Aug. 1, 1985, D.C. Law 6-15, § 3(a), 32 DCR 3570; Apr. 12, 2000, D.C. Law 13-91, § 117(a), 47 DCR 520; Oct. 19, 2002, D.C. Law 14-213, § 6, 49 DCR 8140; Oct. 20, 2005, D.C. Law 16-33, § 2382(a), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 1-1143. 1973 Ed., § 1-853.

Emergency legislation. — For temporary (90 day) repeal of section, see § 2382(a), (c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 1-95. — For legislative history of D.C. Law 1-95, see Historical and Statutory Notes following § 2-215.01.

Legislative history of Law 3-91. — For legislative history of D.C. Law 3-91, see Historical and Statutory Notes following § 2-215.02.

Legislative history of Law 6-15. — Law 6-15 was introduced in Council and assigned Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 1985 and May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was assigned Act No. 6-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 2-201.01.

Legislative history of Law 14-213. — Law 14-213, the “Technical Amendments Act of 2002”, was introduced in Council and assigned Bill No. 14-671, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 4, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 26, 2002, it was assigned Act No. 14-459 and transmitted to both Houses of Congress for its review. D.C. Law 14-213 became effective on October 19, 2002.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-307.01.

Editor’s notes. — Section 2382(c) of D.C. Law 16-33 provided: “(c) An order, rule, or regulation in effect under a law repealed by this section shall remain in effect under the corresponding provision enacted by this subtitle subtitle N of title II, §§ 2301 to 2391, of D.C. Law 16-33 until repealed, amended, or superseded.”.

§ 2-215.04. District of Columbia Local Business Opportunity Commission — Regulations; disclosure of interest in pending measure; meetings; quorum; voting; appointment of Chairperson; staff; records. [Repealed].

Repealed.

(Mar. 29, 1977, D.C. Law 1-95, § 5, 23 DCR 9532b; Sept. 13, 1980, D.C. Law 3-91, § 4, 27 DCR 3280; Apr. 27, 1999, D.C. Law 12-268, § 8, 46 DCR 969; Apr. 12, 2000, D.C. Law 13-91, § 117(b), 47 DCR 520; Oct. 20, 2005, D.C. Law 16-33, § 2382(a), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 1-1144. 1973 Ed., § 1-854.

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 9 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Act of 1996 (D.C. Law 11-267, May 8, 1997, law notification 44 DCR 2986).

For temporary (225 day) amendment of section, see § 9 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Act of 1998 (D.C. Law 12-102, April 30, 1998, law notification 45 DCR 2793).

Emergency legislation. — For temporary amendment of section, see § 9 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-65, April 3, 1997, 44 DCR 2437), and see § 9 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Act of 1998 (D.C. Act 12-347, May 6, 1998, 45 DCR 2988).

For temporary (90-day) amendment of section, see § 8 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Act of 1999 (D.C. Act 13-39, March 22, 1999, 46 DCR 3019).

For temporary (90 day) repeal of section, see § 2382(a), (c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 1-95. — For legislative history of D.C. Law 1-95, see Historical and Statutory Notes following § 2-215.01.

Legislative history of Law 3-91. — For legislative history of D.C. Law 3-91, see Historical and Statutory Notes following § 2-215.02.

Legislative history of Law 12-268. — Law 12-268, the “Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1998,” was introduced in Council and assigned Bill No. 12-616, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 24, 1998, it was assigned Act No. 12-580 and transmitted to both Houses of Congress for its review. D.C. Law 12-268 became effective on April 27, 1999.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 2-201.01.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-307.01.

Editor’s notes. — Section 2382(c) of D.C. Law 16-33 provided: “(c) An order, rule, or regulation in effect under a law repealed by this section shall remain in effect under the corresponding provision enacted by this subtitle subtitle N of title II, §§ 2301 to 2391, of D.C. Law 16-33 until repealed, amended, or superseded.”

§ 2-215.05. Minority Business Opportunity Commission — Reports. [Repealed].

Repealed.

(Mar. 29, 1977, D.C. Law 1-95, § 6, 23 DCR 9532b; Sept. 13, 1980, D.C. Law 3-91, § 5(a), (b), 27 DCR 3280; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-1145. 1973 Ed., § 1-855.

Legislative history of Law 1-95. — For legislative history of D.C. Law 1-95, see Historical and Statutory Notes following § 2-215.01.

Legislative history of Law 3-91. — For legislative history of D.C. Law 3-91, see Historical and Statutory Notes following § 2-215.02.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 2-201.01.

§ 2-215.06. Allocation of agency contracts to local minority enterprises; quarterly agency reports on contracts; Council review of goals. [Repealed].

Repealed.

(Mar. 29, 1977, D.C. Law 1-95, § 7, 23 DCR 9532b; Mar. 9, 1983, D.C. Law 4-167, § 2(b), 29 DCR 4983; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-1146. 1973 Ed., § 1-856.

Legislative history of Law 1-95. — For

legislative history of D.C. Law 1-95, see Historical and Statutory Notes following § 2-215.01.

Legislative history of Law 4-167. — For

legislative history of D.C. Law 4-167, see Historical and Statutory Notes following § 2-215.10.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-1104.

Transfer of Functions. — The functions of the Department of General Services were

transferred, in part, to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, and transferred, in part, to the Department of Administrative Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984.

§ 2-215.07. Assistance programs for minority contractors. [Repealed].

Repealed.

(Mar. 29, 1977, D.C. Law 1-95, § 8, 23 DCR 9532b; Sept. 13, 1980, D.C. Law 3-91, § 5(c), 27 DCR 3280; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-1147. 1973 Ed., § 1-857.

Legislative history of Law 1-95. — For legislative history of D.C. Law 1-95, see Historical and Statutory Notes following § 2-215.01.

Legislative history of Law 3-91. — For legislative history of D.C. Law 3-91, see Historical and Statutory Notes following § 2-215.02.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-1104.

§ 2-215.08. Certificates of registration. [Repealed].

Repealed.

(Mar. 29, 1977, D.C. Law 1-95, § 9, 23 DCR 9532b; Sept. 13, 1980, D.C. Law 3-91, § 5(d), (e), (f), 27 DCR 3280; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-1148. 1973 Ed., § 1-858.

Legislative history of Law 1-95. — For legislative history of D.C. Law 1-95, see Historical and Statutory Notes following § 2-215.01.

Legislative history of Law 3-91. — For legislative history of D.C. Law 3-91, see Historical and Statutory Notes following § 2-215.02.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-1104.

§ 2-215.09. Functions of the Commission. [Repealed].

Repealed.

(Mar. 29, 1977, D.C. Law 1-95, § 10, 23 DCR 9532b; Sept. 13, 1980, D.C. Law 3-91, § 5(g), 27 DCR 3280; Mar. 9, 1983, D.C. Law 4-167, § 2(c), (d), 29 DCR 4983; Mar. 14, 1985, D.C. Law 5-159, § 11, 32 DCR 30; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-1149. 1973 Ed., § 1-859.

Legislative history of Law 1-95. — For legislative history of D.C. Law 1-95, see Historical and Statutory Notes following § 2-215.01.

Legislative history of Law 3-91. — For legislative history of D.C. Law 3-91, see Historical and Statutory Notes following § 2-215.02.

Legislative history of Law 4-167. — For

legislative history of D.C. Law 4-167, see Historical and Statutory Notes following § 2-215.10.

Legislative history of Law 5-159. — Law 5-159 was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984 and December 4, 1984, respectively. Signed by

the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-1104.

§ 2-215.09a. Advance, partial, or progress payments. [Repealed].

Repealed.

(Mar. 29, 1977, D.C. Law 1-95, § 12, 23 DCR 9532b; Apr. 12, 1997, D.C. Law 11-259, § 306, 44 DCR 1423; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-1150. 1973 Ed., § 1-860.

Legislative history of Law 1-95. — For legislative history of D.C. Law 1-95, see Historical and Statutory Notes following § 2-215.01.

Legislative history of Law 11-259. — For

legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-213.02.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-1104.

§ 2-215.10. Rules proposed by Commission. [Repealed].

Repealed.

(Mar. 29, 1977, D.C. Law 1-95, § 12a, as added Mar. 9, 1983, D.C. Law 4-167, § 2(e), 29 DCR 4983; Aug. 1, 1985, D.C. Law 6-15, § 3(b), 32 DCR 35703; Apr. 12, 2000, D.C. Law 13-91, § 117(c), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-1150.1.

Legislative history of Law 1-95. — For legislative history of D.C. Law 1-95, see Historical and Statutory Notes following § 2-215.01.

Legislative history of Law 4-167. — Law 4-167 was introduced in Council and assigned Bill No. 4-437, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first, amended first, and second readings on July 20, 1982, September 21, 1982 and October 5, 1982, respectively. Signed by the Mayor on October 22, 1982, it was assigned Act No. 4-242 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-15. — For legislative history of D.C. Law 6-15, see Historical and Statutory Notes following § 2-215.03.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-1104.

Editor's notes. — Proposed rules approved: Pursuant to Resolution 5-387, the "Minority Business Opportunity Commission Rules Approval Resolution of 1983", effective October 18, 1983, the Council approved the proposed rules of the District of Columbia Minority Business Opportunity Commission transmitted by the Mayor on July 1, 1983.

§ 2-215.11. Severability. [Repealed].

Repealed.

(Mar. 29, 1977, D.C. Law 1-95, § 13, 23 DCR 9532b; Oct. 20, 2005, D.C. Law 16-33, § 2382(a), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 1-1151. 1973 Ed., § 1-861.

Emergency legislation. — For temporary (90 day) repeal of section, see § 2382(a), (c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 1-95. — For legislative history of D.C. Law 1-95, see Historical and Statutory Notes following § 2-215.01.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-307.01.

Editor's notes. — Section 2382(c) of D.C. Law 16-33 provided: "(c) An order, rule, or

regulation in effect under a law repealed by this section shall remain in effect under the corresponding provision enacted by this subtitle sub-

title N of title II, §§ 2301 to 2391, of D.C. Law 16-33 until repealed, amended, or superseded.”.

Subchapter IX. Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises.

§ 2-217.01. Definitions. [Repealed].

Repealed.

(Apr. 27, 1999, D.C. Law 12-268, § 2, 46 DCR 969; Oct. 14, 1999, D.C. Law 13-49, § 13(a), 46 DCR 5153; Oct. 4, 2000, D.C. Law 13-169, § 2(a), 47 DCR 5846; Oct. 20, 2005, D.C. Law 16-33, § 2382(b), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 1-1153.1.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Amendment Act of 1999 (D.C. Law 13-77, April 5, 2000, law notification 47 DCR 2634).

For temporary (225 day) amendment of section, see § 2(a) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Temporary Amendment Act of 2000 (D.C. Law 13-216, April 3, 2001, law notification 48 DCR 3458).

For temporary (225 day) amendment of section, see § 2(a) of the Local, Small, and Disadvantaged Business Enterprises Certification Temporary Amendment Act of 2005 (D.C. Law 16-14, July 22, 2005, law notification 52 DCR 7167).

Emergency legislation. — For temporary addition of subchapter II-B 1981 Ed., see §§ 2-9 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Second Emergency Act of 1997 (D.C. Act 12-221, December 29, 1997, 44 DCR 103) and §§ 2-8 and § 10 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Act of 1998 (D.C. Act 12-565, January 12, 1999, 46 DCR 700).

For temporary (90-day) addition of subchapter II-B 1981 Ed., see §§ 2 to 7 and 10 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Act of 1999 (D.C. Act 13-39, March 22, 1999, 46 DCR 3019).

For temporary (90-day) amendment of section, see § 2(a) of the Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Act 13-136, August 4, 1999, 46 DCR 6794).

For temporary (90-day) amendment of section, see § 2(a) of the Blanket Order Blitz

Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Act 13-184, November 2, 1999, 46 DCR 9745).

For temporary (90-day) amendment of section, see § 2(a) of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-278, March 7, 2000, 47 DCR 2019).

For temporary (90-day) amendment of section, see § 2(a) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

For temporary (90 day) amendment of section, see § 2(a) of Local, Small, and Disadvantaged Business Enterprises Certification Emergency Amendment Act of 2005 (D.C. Act 16-72, April 25, 2005, 52 DCR 4577).

For temporary (90 day) repeal of section, see § 2382(b), (c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 12-268. — For legislative history of D.C. Law 12-268, see Historical and Statutory Notes following § 2-215.04.

Legislative history of Law 13-49. — Law 13-49, the “Criminal Code and Clarifying Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-61, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 2, 1999, and April 13, 1999, respectively. Signed by the Mayor on May 13, 1999, it was assigned Act No. 13-69 and transmitted to both Houses of Congress for its review. D.C. Law 13-49 became effective on October 19, 1999.

Legislative history of Law 13-169. — For Law 13-169, see notes following § 2-201.01.

Legislative history of Law 16-33. — Law 16-33, the “Fiscal Year 2006 Budget Support Act of 2005”, was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Editor’s notes. — Policy on the Participation of Local, Small, & Disadvantaged business Enterprises in Executive Branch Procurements, see Mayor’s Order 2003-14, January 29, 2003 (50 DCR 1784).

Section 2382(c) of D.C. Law 16-33 provided: “(c) An order, rule, or regulation in effect under a law repealed by this section shall remain in effect under the corresponding provision enacted by this subtitle N of title II, §§ 2301 to 2391, of D.C. Law 16-33 until repealed, amended, or superseded.”.

§ 2-217.02. District government contracting with local business enterprises; quarterly agency reports on contracts; Council review of goals. [Repealed].

Repealed.

(Apr. 27, 1999, D.C. Law 12-268, § 3, 46 DCR 969; Oct. 14, 1999, D.C. Law 13-49, § 13(b), 46 DCR 5153; Oct. 4, 2000, D.C. Law 13-169, § 2(b), 47 DCR 5846; Oct. 20, 2005, D.C. Law 16-33, § 2382(b), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 1-1153.2.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Temporary Amendment Act of 2000 (D.C. Law 13-216, April 3, 2001, law notification 48 DCR 3458).

For temporary (225 day) amendment of section, see § 2(a) of Local, Small and Disadvantaged Business Enterprises Program Temporary Amendment Act of 2003 (D.C. Law 14-291, April 4, 2003, law notification 50 DCR 5849).

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(b) of Local, Small and Disadvantaged Business Enterprises Program Temporary Amendment Act of 2003 (D.C. Law 14-291, April 4, 2003, law notification 50 DCR 5849).

Emergency legislation. — For temporary (90-day) addition of Subchapter II-B [1981 Ed.], see notes following § 2-217.01.

For temporary (90-day) amendment of sec-

tion, see § 2(b) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

For temporary (90 day) amendment of section, see § 2 of Local, Small and Disadvantaged Business Enterprises Program Emergency Amendment Act of 2002 (D.C. Act 14-598, January 7, 2003, 50 DCR 658).

For temporary (90 day) repeal of section, see § 2382(b) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 12-268. — For legislative history of D.C. Law 12-268, see Historical and Statutory Notes following § 2-215.04.

Legislative history of Law 13-49. — For Law 13-49, see notes following § 2-217.01.

Legislative history of Law 13-169. — For Law 13-169, see notes following § 2-201.01.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-217.01.

§ 2-217.03. Assistance programs for local business enterprise contractors, disadvantaged business enterprise contractors, and small business enterprise contractors. [Repealed].

Repealed.

(Apr. 27, 1999, D.C. Law 12-268, § 4, 46 DCR 969; Oct. 14, 1999, D.C. Law

13-49, § 13(c), 46 DCR 5153; Oct. 4, 2000, D.C. Law 13-169, § 2(c), 47 DCR 5846; Oct. 20, 2005, D.C. Law 16-33, § 2382(b), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 1-1153.3.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Amendment Act of 1999 (D.C. Law 13-77, April 5, 2000, law notification 47 DCR 2634).

For temporary (225 day) amendment of section, see § 2(c) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Temporary Amendment Act of 2000 (D.C. Law 13-216, April 3, 2001, law notification 48 DCR 3458).

Emergency legislation. — For temporary (90-day) addition of subchapter II-B [1981 Ed.], see notes following § 2-217.01.

For temporary (90-day) amendment of section, see § 2(b) of the Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Act 13-136, August 4, 1999, 46 DCR 6794).

For temporary (90-day) amendment of section, see § 2(b) of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emer-

gency Amendment Act of 1999 (D.C. Act 13-184, November 2, 1999, 46 DCR 9745).

For temporary (90-day) amendment of section, see § 2(b) of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-278, March 7, 2000, 47 DCR 2019).

For temporary (90-day) amendment of section, see § 2(c) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

For temporary (90 day) repeal of section, see § 2382(b) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 12-268. — For legislative history of D.C. Law 12-268, see Historical and Statutory Notes following § 2-215.04.

Legislative history of Law 13-49. — For Law 13-49, see notes following § 2-217.01.

Legislative history of Law 13-169. — For Law 13-169, see notes following § 2-201.01.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-217.01.

§ 2-217.04. Certificate of registration. [Repealed].

Repealed.

(Apr. 27, 1999, D.C. Law 12-268, § 5, 46 DCR 969; Oct. 14, 1999, D.C. Law 13-49, § 13(d), 46 DCR 5153; Oct. 4, 2000, D.C. Law 13-169, § 2(d), 47 DCR 5846; Oct 20, 2005, D.C. Law 16-33, § 2382(b), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 1-1153.4.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Amendment Act of 1999 (D.C. Law 13-77, April 5, 2000, law notification 47 DCR 2634).

For temporary (225 day) amendment of section, see § 2(d) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Temporary Amendment Act of 2000 (D.C. Law 13-216, April 3, 2001, law notification 48 DCR 3458).

For temporary (225 day) amendment of section, see § 2(b) of the Local, Small, and Disadvantaged Business Enterprises Certification Temporary Amendment Act of 2005 (D.C. Law

16-14, July 22, 2005, law notification 52 DCR 7167).

Emergency legislation. — For temporary (90-day) addition of Subchapter II-B [1981 Ed.], see notes following § 2-217.01.

For temporary (90-day) amendment of section, see § 2(c) of the Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Act 13-136, August 4, 1999, 46 DCR 6794).

For temporary (90-day) amendment of section, see § 2(c) of the Blanket Order Blitz Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Act 13-184, November 2, 1999, 46 DCR 9745).

For temporary (90-day) amendment of section, see § 2(c) of the Blanket Order Blitz

Increased Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-278, March 7, 2000, 47 DCR 2019).

For temporary (90-day) amendment of section, see § 2(d) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

For temporary (90 day) amendment of section, see § 2(b) of Local, Small, and Disadvantaged Business Enterprises Certification Emergency Amendment Act of 2005 (D.C. Act 16-72, April 25, 2005, 52 DCR 4577).

For temporary (90 day) repeal of section, see § 2382(b) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 12-268. — For legislative history of D.C. Law 12-268, see Historical and Statutory Notes following § 2-215.04.

Legislative history of Law 13-49. — For Law 13-49, see notes following § 2-217.01.

Legislative history of Law 13-169. — For Law 13-169, see notes following § 2-201.01.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-217.01.

§ 2-217.05. Functions of the Commission. [Repealed].

Repealed.

(Apr. 27, 1999, D.C. Law 12-268, § 6, 46 DCR 969; Oct. 14, 1999, D.C. Law 13-49, § 13(e), 46 DCR 5153; Oct. 4, 2000, D.C. Law 13-169, § 2(e), 47 DCR 5846; Oct. 20, 2005, D.C. Law 16-33, § 2382(b), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 1-1153.5.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Temporary Amendment Act of 1999 (D.C. Law 13-33, June 24, 1999, law notification 46 DCR 8698).

For temporary (225 day) amendment of section, see § 2(e) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Temporary Amendment Act of 2000 (D.C. Law 13-216, April 3, 2001, law notification 48 DCR 3458).

Emergency legislation. — For temporary (90-day) addition of Subchapter II-B [1981 Ed.], see notes following § 2-217.01.

For temporary (90-day) amendment of section, see § 2 of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 1999 (D.C. Act 13-89, June 4, 1999, 46 DCR 5322).

For temporary (90-day) amendment of section, see § 2 of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Second Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-160, October 18, 1999, 46 DCR 9214).

For temporary (90-day) amendment of section, see § 2 of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-342, May 9, 2000, 47 DCR 4666).

For temporary (90-day) amendment of section, see § 2(e) of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

For temporary (90 day) repeal of section, see § 2382(b) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 12-268. — For legislative history of D.C. Law 12-268, see Historical and Statutory Notes following § 2-215.04.

Legislative history of Law 13-49. — For Law 13-49, see notes following § 2-217.01.

Legislative history of Law 13-169. — For Law 13-169, see notes following § 2-217.01.

Legislative history of Law 13-216. — For Law 13-216, see notes following § 2-201.01.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-217.01.

§ 2-217.06. Rules. [Repealed].

Repealed.

(Apr. 27, 1999, D.C. Law 12-268, § 7, 46 DCR 969; Oct 20, 2005, D.C. Law 16-33, § 2382(b), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 1-1153.6.

Emergency legislation. — For temporary (90-day) addition of subchapter II-B [1981 Ed.], see notes following § 2-217.01.

For temporary (90 day) repeal of section, see § 2382(b) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 12-268. — For legislative history of D.C. Law 12-268, see Historical and Statutory Notes following § 2-215.04.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-217.01.

§ 2-217.07. Applicability date. [Repealed].

Repealed.

(Apr. 27, 1999, D.C. Law 12-268, § 10, 46 DCR 969; Oct 20, 2005, D.C. Law 16-33, § 2382(b), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 1-1153.7.

Emergency legislation. — For temporary (90-day) addition of subchapter II-B [1981 Ed.], see notes following § 2-217.01.

For temporary (90 day) repeal of section, see § 2382(b) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 12-268. — For legislative history of D.C. Law 12-268, see Historical and Statutory Notes following § 2-215.04.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-217.01.

Subchapter IX-A. Small, Local, and Disadvantaged Business Enterprise Development and Assistance.

PART A.

SHORT TITLE AND DEFINITIONS.

§ 2-218.01. Short title.

This subchapter may be cited to as the “Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005”.

(Oct. 20, 2005, D.C. Law 16-33, § 2301, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2301 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — Law 16-33, the “Fiscal Year 2006 Budget Support Act of 2005”, was introduced in Council and assigned Bill No. 16-200 which was referred to

the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

§ 2-218.02. Definitions.

For the purposes of this subchapter, the term:

(1) “Agency” means an agency, department, office, board, or commission of the District of Columbia government.

(1A) "Business enterprise" means a business entity organized for profit.

(1B) "Certified business enterprise" means a business enterprise or joint venture certified pursuant to part D of this subchapter [§ 2-218.31 et seq. of this subchapter.

(2) "Commission" means the District of Columbia Small and Local Business Opportunity Commission, established by § 2-218.21.

(3) "Department" means the Department of Small and Local Business Development, established by § 2-218.11.

(4) "Director" means the Director of the Department of Small and Local Business Development.

(5) "Disadvantaged business enterprise" means a business enterprise as described in § 2-218.33.

(6) "District of Columbia Supply Schedule" or "DCSS" means the District of Columbia's multiple award schedule procurement program for providing commercial products or services to District government agencies.

(7) "Economically disadvantaged individual" means an individual whose ability to compete in the free enterprise system is impaired because of diminished opportunities to obtain capital and credit as compared to others in the same line of business where such impairment is related to the individual's status as socially disadvantaged. An individual is socially disadvantaged if the individual has reason to believe that the individual has been subjected to prejudice or bias because of his or her identity as a member of a group without regard to his or her qualities as an individual.

(8) "Enterprise zone" means:

(A) The area of the District designated as the District of Columbia Enterprise Zone under section 1400 of the Internal Revenue Code of 1986, approved August 5, 1997 (111 Stat. 863; 26 U.S.C. § 1400); or

(B) An economic development zone designated by the Mayor and approved by the Council pursuant to §§ 6-1501 through 6-1504.

(9) "Expendable budget" means the total budget of an agency, reduced by such funding sources, object classes, objects, and other items as shall be identified by the Mayor through rulemaking.

(10) "Government corporation" means an entity established as a corporate body or independent authority or instrumentality of the District government created to effectuate certain public purposes, with or without a legal existence separate from that of the District government.

(11) "Joint venture" means a combination of property, capital, efforts, skills, or knowledge of 2 or more persons or businesses to carry out a single project.

(12) "Local business enterprise" means a business enterprise as described in § 2-218.31.

(12A) "Local manufacturing business enterprise" means a business as described in § 2-218.39.

(13) "Longtime resident business" means a business which has been continuously eligible for certification as a local business enterprise, as defined in § 2-218.31, for 20 consecutive years, or a small business enterprise, as defined in § 2-218.32, for 15 consecutive years.

(14) “Regional governmental entity” means an organization that represents the District and surrounding local or state governments.

(15) “Resident-owned business” means a local business enterprise owned by an individual who is, or a majority number of individuals who are, subject to personal income tax solely in the District of Columbia.

(16) “Small business enterprise” means a business enterprise as described in § 2-218.32.

(17) “Veteran-owned business enterprise” means a business as described in § 2-218.38.

(Oct. 20, 2005, D.C. Law 16-33, § 2302, 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-191, § 15, 53 DCR 6794; Mar. 14, 2007, D.C. Law 16-266, § 2(a), 54 DCR 829; July 18, 2008, D.C. Law 17-207, § 2(a), 55 DCR 6107; Apr. 20, 2010, D.C. Law 18-141, § 2(a), 57 DCR 1485.)

Effect of amendments. — D.C. Law 16-191, in par. (1), substituted “or commission” for “commission, or instrumentality”.

D.C. Law 16-266, in par. (13), inserted “, or a small business enterprise, as defined in § 2-218.32, for 15 consecutive years” following “for 20 consecutive years”.

D.C. Law 17-207 added pars. (1A) and (1B).

D.C. Law 18-141 added pars. (12A) and (17); and, in par. (15), substituted “subject to personal income tax solely in the District of Columbia” for “subject to personal income tax in the District of Columbia”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of the Department of Small and Local Business Development Subcontracting Clarification Temporary Amendment Act of 2006 (D.C. Law 16-214, March 6, 2007, law notification 54 DCR 2761).

For temporary (225 day) amendment of section, see § 2(a) of the Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Temporary Amendment Act of 2007 (D.C. Law 17-96, January 29, 2008, law notification 55 DCR 3403).

Emergency legislation. — For temporary (90 day) addition, see § 2302 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2(a) of Department of Small and Local Business Development Subcontracting Clarification Emergency Amendment Act of 2006 (D.C. Act 16-513, October 25, 2006, 53 DCR 9091).

For temporary (90 day) amendment of section, see § 2(a) of Department of Small and Local Business Development Subcontracting Clarification Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-575, December 19, 2006, 54 DCR 24).

For temporary (90 day) amendment of section, see § 2(a) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Emergency Amendment Act of 2007 (D.C. Act 17-156, October 18, 2007, 54 DCR 10919).

For temporary (90 day) amendment of section, see § 2(a) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-251, January 23, 2008, 55 DCR 1259).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 16-191. — Law 16-191, the “Technical Amendments Act of 2006”, was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

Legislative history of Law 16-266. — Law 16-266, the “Longtime Resident Business Definition Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-506, which was referred to Committee on Economic Development. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-622 and transmitted to both Houses of Congress for its review. D.C. Law 16-266 became effective on March 14, 2007.

Legislative history of Law 17-207. — Law 17-207, the “Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-Making

Authority Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-444 which was referred to Economic Development. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on May 20, 2008, it was assigned Act No. 17-379 and transmitted to both Houses of Congress for its review. D.C. Law 17-207 became effective on July 18, 2008.

Legislative history of Law 18-141. — Law 18-141, the “Department of Small and Local

Business Development Amendment Act of 2009”, was introduced in Council and assigned Bill No. 18-332, which was referred to the Committee on Economic Development. The bill was adopted on first and second readings on November 3, 2009, and December 1, 2009, respectively. Enacted without signature by the Mayor on February 3, 2010, it was assigned Act No. 18-306 and transmitted to both Houses of Congress for its review. D.C. Law 18-141 became effective on April 20, 2010.

CASE NOTES

In general.

Even if company that submitted lowest bid on alleyway rehabilitation project was likely to succeed on the merits of its claim challenging District of Columbia Code provision granting preferential treatment in the award of city contracts to businesses that had operated in the District for at least twenty years, the potential of harm to the District and the public interest in the short run far outweighed any limited and short-term financial harm to the company, and thus preliminary injunction en-

joining application of the Code provision was not warranted; company faced at most a temporary economic loss if it lost alleyway contract prior to the resolution of its suit, and, following amendment to the Code, the company was eligible to receive preferential treatment, but grant of injunction would pose real danger of harm to both the District and the public interest should there be a delay in the performance of the project. *Capitol Paving of D.C., Inc. v. District of Columbia*, 496 F.Supp.2d 54, 2007 U.S. Dist. LEXIS 37287 (2007).

PART B.

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT.

§ 2-218.11. Establishment of the Department of Small and Local Business Development.

(a) Pursuant to § 1-204.04(b), there is established, as a subordinate agency, in the Executive Branch of the government of the District of Columbia, the Department of Small and Local Business Development.

(Oct. 20, 2005, D.C. Law 16-33, § 2311, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2311 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

§ 2-218.12. Director of the Department of Small and Local Business Development.

(a)(1) The Department shall be under the supervision of a Director who shall carry out the functions and authorities assigned to the Department.

(2) The Mayor shall appoint the Director with the advice and consent of the Council.

(b) The Director shall have full authority over the Department and all functions and personnel assigned to the Department, including the power to re-delegate to other employees and officials of the Department such powers

and authority as in the judgment of the Director are warranted in the interests of efficiency and sound administration.

(c) The Director shall monitor the accomplishment of the requirements of this subchapter in contracting and procurement performed by any government corporation involved in the development of a commercial ballpark or soccer stadium and in all projects exceeding \$10 million in value.

(d) The Director shall have authority to make a recommendation to the Chief Procurement Officer of the Office of Contracting and Procurement or a government corporation to reject proposed award of contract awards and procurements that the Director finds fail to comply with agency or project requirements for certified business enterprise contracting and procurement.

(e) The Director shall have authority to make a recommendation to the Chief Procurement Officer of the Office of Contracting and Procurement or a government corporation to require the payment of fines pursuant to § 2-218.48 by prime contractors who fail to comply with the requirements of this subchapter.

(f) The Director shall have the authority to make a recommendation to the Chief Procurement Officer of the Office of Contracting and Procurement or a government corporation to withhold payment on contracts shown to be substantially noncompliant as to their approved certified business enterprise subcontracting plans, if a subcontracting plan is required pursuant to § 2-218.46.

(g) The Director shall have the authority to impose fines for violations of this subchapter or the regulations implemented thereunder.

(Oct. 20, 2005, D.C. Law 16-33, § 2312, 52 DCR 7503; July 18, 2008, D.C. Law 17-207, § 2(b), 55 DCR 6107; Apr. 20, 2010, D.C. Law 18-141, § 2(b), 57 DCR 1485.)

Effect of amendments. — D.C. Law 17-207, in subsecs. (d) and (f), substituted “certified” for “local, small, and disadvantaged”.

D.C. Law 18-141 added subsec. (g).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of the Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Temporary Amendment Act of 2007 (D.C. Law 17-96, January 29, 2008, law notification 55 DCR 3403).

Emergency legislation. — For temporary (90 day) addition, see § 2312 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2(b) of Department of Small and

Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Emergency Amendment Act of 2007 (D.C. Act 17-156, October 18, 2007, 54 DCR 10919).

For temporary (90 day) amendment of section, see § 2(b) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-251, January 23, 2008, 55 DCR 1259).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 17-207. — For Law 17-207, see notes following § 2-218.02.

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

§ 2-218.13. Organization and functions of the Department.

(a)(1) It shall be the goal and responsibility of the Department to stimulate and foster the economic growth and development of businesses based in and

serving the District of Columbia, particularly certified business enterprises, with the intended goals of:

(A) Stimulating and expanding the local tax base of the District of Columbia;

(B) Increasing the number of viable employment opportunities for District residents; and

(C) Extending economic prosperity to local business owners, their employees, and the communities they serve.

(2) Through advocacy, business development programs, and technical assistance offerings, the Department shall seek to maximize opportunities for certified business enterprises to participate in:

(A) The District's contracting and procurement process;

(B) The District's economic development activities; and

(C) Federal and private sector business opportunities that occur in the District of Columbia.

(b) The Department shall administer part D of this subchapter except for those responsibilities assigned to another agency by this subchapter or through an order of the Mayor. The Director shall establish procedures and guidelines for the implementation of the programs established pursuant to part D of this subchapter. The Mayor shall not reassign a responsibility specifically assigned to the Department by this subchapter.

(c) The Department shall include, and the Director shall establish, oversee, and administer, the following divisions which shall have the stated responsibilities:

(1) The Office of Certification which shall be responsible for:

(A) Reviewing applications for certification as a:

(i) Local business enterprise;

(ii) Small business enterprise;

(iii) Disadvantaged business enterprise;

(iv) Resident-owned business;

(v) Longtime resident business; or

(vi) Local business enterprise with its principal office located in an enterprise zone;

(B) Providing information and assistance to business enterprises regarding the certification and application process;

(C) Determining a business enterprise's or joint venture's initial eligibility for certification under part D of this subchapter and reviewing and determining the continued eligibility of business enterprises and joint ventures certified under part D of this subchapter;

(D) Determining the percentage or the dollar amount of a project performed by a joint venture that may be attributed toward an agency's percentage goal;

(E) Providing information and assistance to the Commission and the District of Columbia Auditor in performance of its appeals and audit functions under §§ 2-218.22, 2-218.50, and 2-218.53;

(F) Repealed;

(G) Repealed;

(H) Repealed;

(I) Reviewing the quarterly and annual reports of agencies required by § 2-218.53; and

(J) Reviewing any reports as may be required of third parties;

(2) The Office of Business Opportunities and Access to Capital, which shall be responsible for:

(A) Maintaining, growing, and advocating on behalf of certified business enterprises in the following areas;

(i) Certified business enterprises with less than \$10 million in annual revenue;

(ii) Under separate criteria, certified business enterprises with over \$10 million in annual revenue; and

(iii) All certified business enterprises that desire to participate in contracting opportunities with any government corporation;

(B) Maintaining and providing public access to a list of all current District government contracting and procurement bids and solicitations;

(C) Maintaining and providing public access to a list of other current government contracting and procurement bids and solicitations, including those of the federal government and nearby local jurisdictions;

(D) Monitoring agency contracting and procurement activities to the extent those activities are related to the achievement of the goals set forth in § 2-218.41;

(E) Monitoring third-party contracting and procurement activities to the extent those activities are related to the achievement of goals related to contracting with, and procuring from, certified business enterprises;

(F) Monitoring and preparing recommendations to ensure agency achievement of the goals set forth in § 2-218.41;

(G) Monitoring agency implementation of the programs required by part D of this subchapter;

(H) Maintaining a list of current private contracting and procurement bids and solicitations;

(I) Organizing and publicizing certified business enterprise opportunities and events where contracting, procurement, or networking opportunities will be available;

(J) Organizing or attending meetings with business groups and other organizations to provide information on the District's certified business enterprise programs, the certification process, and the services and activities of the Department;

(K) Making known to the public and the business community information on the District's certified business enterprise programs and the certification process; and

(L) Making known to the public and the business community information on the services and activities of the Department; and

(3) The Office of Training and Education, which shall be responsible for the following:

(A) Coordinating the District's offerings, curricula, and locations of educational and training classes, sessions, and seminars to assist small businesses in the following areas:

(i) Basic and intermediate business skills, such as bookkeeping, accounting, and marketing;

(ii) Locating and obtaining contracting and procurement opportunities; and

(iii) Locating and obtaining financing and capital;

(B) Maintaining a current list of educational and training classes, sessions, and seminars in the Washington Metropolitan Region in the subject areas set forth in subparagraph (A) of this paragraph offered by persons or organizations outside the District government;

(C) To the extent feasible, coordinating the offerings, curricula, and locations of educational and training classes, sessions, and seminars in the Washington Metropolitan Region in the subject areas set forth in subparagraph (A) of this paragraph offered by persons or organizations outside the District government;

(D) To the extent necessary, providing educational and training classes, sessions, and seminars in the subject areas set forth in subparagraph (A) of this paragraph which are not otherwise conveniently or comprehensively provided by the District government or persons or organizations outside the District government; and

(E) Training agency contracting officers on the requirements and procedures of this subchapter.

(c-1) The Department shall have the authority to issues grants to local businesses (whether or not certified pursuant to this subchapter), community and neighborhood groups or other nonprofit organizations as necessary to effectuate the mission of the Department and the purposes of this subchapter.

(d) The Director may establish such other offices and the Department may take such other actions as are necessary or appropriate to carry out the provisions of this subchapter.

(Oct. 20, 2005, D.C. Law 16-33, § 2313, 52 DCR 7503; Sept. 18, 2007, D.C. Law 17-20, § 2062(a), 54 DCR 7052; July 18, 2008, D.C. Law 17-207, § 2(c), 55 DCR 6107; Apr. 20, 2010, D.C. Law 18-141, § 2(c), 57 DCR 1485.)

Effect of amendments. — D.C. Law 17-20 rewrote subsecs. (a) and (c)(1).

D.C. Law 17-207, in subsec. (c)(1)(F), substituted “the achievement of the goals set forth in § 2-218.41” for “the achievement of goals related to contracting with, and procuring from, certified business enterprises; in subsec. (c)(1)(G), substituted “related to contracting with, and procuring from, certified business enterprises” for “the achievement of the goals set forth in § 2-218.41”; rewrote subsec. (c)(2); and added subsec. (c-1).

D.C. Law 18-141, in subsec. (c)(1), substituted “Certification” for “Certification, Compliance, and Enforcement,” in the introductory language, substituted “§§ 2-218.22, 2-218.50, and 2-218.53” for “§ 2-218.22” in subpar. (E), and repealed subpars. (F), (G), and (H).

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2(b) of the Department of Small and Local Business Development Subcontracting Clarification Temporary Amendment Act of 2006 (D.C. Law 16-214, March 6, 2007, law notification 54 DCR 2761).

For temporary (225 day) amendment of section, see § 2(c) of the Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Temporary Amendment Act of 2007 (D.C. Law 17-96, January 29, 2008, law notification 55 DCR 3403).

Emergency legislation. — For temporary (90 day) addition, see § 2313 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2(b) of Department of Small and Local Business Development Subcontracting Clarification Emergency Amendment Act of

2006 (D.C. Act 16-513, October 25, 2006, 53 DCR 9091).

For temporary (90 day) amendment of section, see § 2(b) of Department of Small and Local Business Development Subcontracting Clarification Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-575, December 19, 2006, 54 DCR 24).

For temporary (90 day) amendment of section, see § 2062(a) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 2(c) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Emergency Amendment Act of 2007 (D.C. Act 17-156, October 18, 2007, 54 DCR 10919).

For temporary (90 day) amendment of sec-

tion, see § 2(c) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-251, January 23, 2008, 55 DCR 1259).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 2-215.24.

Legislative history of Law 17-207. — For Law 17-207, see notes following § 2-218.02.

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

Short title. — Short title: Section 2061 of D.C. Law 17-20 provided that subtitle G of title II of the act may be cited as the “Department of Small and Local Business Development Amendment Act of 2007”.

§ 2-218.14. Transfers from the Office of Local Business Development to the Department of Small and Local Business Development.

All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Office of Local Business Development established by § 2-1205.01 [repealed], are hereby transferred to the Department.

(Oct. 20, 2005, D.C. Law 16-33, § 2314, formerly § 2315, as added Apr. 7, 2006, D.C. Law 16-91, § 139, 52 DCR 10637; renumbered Mar. 2, 2007, D.C. Law 16-191, § 48(m), 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191, in the credit, renumbered the section designation from § 2315 to § 2314.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 2-218.54.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 2-218.02.

PART C.

DISTRICT OF COLUMBIA SMALL AND LOCAL BUSINESS OPPORTUNITY COMMISSION.

§ 2-218.21. District of Columbia Small and Local Business Opportunity Commission Establishment; composition; appointment; term of office; qualifications; vacancies; removal; compensation.

(a) Pursuant to § 1-204.04(b), there is established the District of Columbia Small and Local Business Opportunity Commission. The Commission is the successor in interest to the Local Business Opportunity Commission, established by § 2-215.03(a) [repealed].

(b)(1) The Commission shall consist of 9 members. The Mayor shall appoint one member from each ward of the District and one at-large member to staggered, 2-year terms with the advice and consent of the Council, in accordance with § 1-523.01.

(2) All members of the Commission shall be residents of the District of Columbia.

(3) Commissioners shall be eligible for reappointment.

(4) All commissioners shall have knowledge of the small, local, or disadvantaged business community as it relates to employment and economic development.

(5) Notwithstanding the provisions of this section, current members of the Local Business Opportunity Commission, as established by § 2-215.03(a) [repealed], shall be considered qualified and may continue to serve as members of the Commission until new members are appointed.

(c)(1) The Mayor shall appoint the chairperson of the Commission from among its members with the advice and consent of the Council. The nomination of the chairperson shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the nomination within the 45-day period of review, the nomination shall be deemed approved.

(2) The chairperson shall serve as the chairperson at the pleasure of the Mayor.

(d) Any person appointed to fill a vacancy on the Commission shall be appointed only for the unexpired term of the member whose vacancy is being filled.

(e) The Mayor may remove any member of the Commission for misconduct, incapacity, or neglect of duty in accordance with procedures that the Mayor shall establish and that shall include procedures for notification and an opportunity for hearing.

(f)(1) The Commission shall meet at least once each month for the purpose of transacting any business as may properly come before it.

(2) The Commission shall meet with the Chairman of the Council Committee on Economic Development at least once per year.

(3) Special meetings may be held at such times as the chairperson may provide. Notice of each meeting and the time and place thereof shall be given to each member in such manner as the Commission may provide.

(4) The Commission may permit members to participate in meetings by means of a conference telephone, interactive conference video, or other similar communications equipment when it is otherwise difficult or infeasible for the members to attend the meeting in person; provided, that each member participating by such device can be identified when speaking, all participants are able to hear each other at the same time, and members of the public attending the meeting are able to hear any member of the Commission who speaks during the meeting.

(g) A majority of the members appointed to the Commission at any given time shall constitute a quorum for the transaction of official business. Official actions of the Commission shall be based on a majority vote of the members participating at the meeting.

(h) A Commission member who has a direct financial or personal interest in any measure pending before the Commission shall disclose this fact to the Commission and shall not vote upon such measure.

(i) Members of the Commission shall serve without compensation for their service on the Commission.

(Oct. 20, 2005, D.C. Law 16-33, § 2321, 52 DCR 7503; Sept. 18, 2007, D.C. Law 17-20, § 2062(b), 54 DCR 7052.)

Effect of amendments. — D.C. Law 17-20, in subsec. (f)(4), deleted “for the certification of joint ventures” following “participate in meetings”.

Emergency legislation. — For temporary (90 day) addition, see § 2321 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2062(b) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 2-215.24.

§ 2-218.22. Functions of the Commission.

The Commission shall:

(1) Hear all requested appeals by business enterprises upon the denial of an application for certification by the Department; and

(2) Take such other actions as are necessary or appropriate to carry out the responsibilities of the Commission under this subchapter.

(Oct. 20, 2005, D.C. Law 16-33, § 2322, 52 DCR 7503; Sept. 18, 2007, D.C. Law 17-20, § 2062(c), 54 DCR 7052; Apr. 20, 2010, D.C. Law 18-141, § 2(d), 57 DCR 1485.)

Effect of amendments. — D.C. Law 17-20 rewrote pars. (1) and (2), which had read as follows: “(1) Determine a business enterprise’s or joint venture’s eligibility for certification under part D and review and determine the continued eligibility of business enterprises and joint ventures certified by the Commission; (2) Determine the percentage of the amount of a joint venture which may be attributed toward an agency’s percentage goal; and”

D.C. Law 18-141 rewrote the section, which had read as follows: “The Commission shall: (1) Hear all requested appeals by business enterprises upon the denial of an application for initial certification, reinstatement, or renewal by the Department; (2) Perform regular and routine aud Department’s certification process through a random review of 5 applications per

month; and (3) Repeal and suspend the certification of a business enterprise pursuant to § 2-218.63.”

Emergency legislation. — For temporary (90 day) addition, see § 2322 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2062(c) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 2-215.24.

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

§ 2-218.23. Additional functions of the Commission. [Repealed].

Repealed.

(Oct. 20, 2005, D.C. Law 16-33, § 2323, 52 DCR 7503; July 18, 2008, D.C. Law

17-207, § 2(d), 55 DCR 6107; Apr. 20, 2010, D.C. Law 18-141, § 2(e), 57 DCR 1485.)

Effect of amendments. — D.C. Law 17-207 substituted “certified” for “local, small, and disadvantaged”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(d) of the Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Temporary Amendment Act of 2007 (D.C. Law 17-96, January 29, 2008, law notification 55 DCR 3403).

Emergency legislation. — For temporary (90 day) addition, see § 2323 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2(d) of Department of Small and Local Business Development Subcontracting

Clarification, Benefit Expansion, and Grant-making Authority Emergency Amendment Act of 2007 (D.C. Act 17-156, October 18, 2007, 54 DCR 10919).

For temporary (90 day) amendment of section, see § 2(d) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-251, January 23, 2008, 55 DCR 1259).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 17-207. — For Law 17-207, see notes following § 2-218.02.

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

§ 2-218.24. Record keeping.

(a) A record of the proceedings of the Commission shall be kept and files shall be maintained.

(b) The Department shall and the Commission may maintain a register of all applicants for registration showing for each applicant the date of the application, name, qualifications, place of business, place of applicant’s residence, and whether the certificate was granted or denied.

(c) The books and register of the Commission shall be prima facie evidence of all matters recorded therein.

(Oct. 20, 2005, D.C. Law 16-33, § 2324, 52 DCR 7503; Sept. 18, 2007, D.C. Law 17-20, § 2062(d), 54 DCR 7052.)

Effect of amendments. — D.C. Law 17-20, in subsec. (b), substituted “The Department shall and the Commission may” for “the Commission shall”.

Emergency legislation. — For temporary (90 day) addition, see § 2324 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2062(d) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 2-215.24.

§ 2-218.25. By-laws and internal rules.

(1) The Commission may promulgate, amend, repeal, and enforce any by-laws and internal rules of operation, consistent with the provisions of this subchapter, as may be necessary or appropriate to carry out its responsibilities under this subchapter.

(2) The Department may promulgate, amend, repeal, and enforce any bylaws and internal rules of operation, consistent with the provisions of this subchapter, as may be necessary or appropriate to carry out its responsibilities under this subchapter.

(Oct. 20, 2005, D.C. Law 16-33, § 2325, 52 DCR 7503; July 18, 2008, D.C. Law 17-207, § 2(e), 55 DCR 6107.)

Effect of amendments. — D.C. Law 17-207 designated par. (1) and added par. (2).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(e) of the Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Temporary Amendment Act of 2007 (D.C. Law 17-96, January 29, 2008, law notification 55 DCR 3403).

Emergency legislation. — For temporary (90 day) addition, see § 2325 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2(e) of Department of Small and

Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Emergency Amendment Act of 2007 (D.C. Act 17-156, October 18, 2007, 54 DCR 10919).

For temporary (90 day) amendment of section, see § 2(e) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-251, January 23, 2008, 55 DCR 1259).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 17-207. — For Law 17-207, see notes following § 2-218.02.

PART D.

PROGRAMS FOR CERTIFIED BUSINESS ENTERPRISES.

Subpart 1—Certified business enterprises.

§ 2-218.31. Local business enterprises.

A business enterprise shall be eligible for certification as a local business enterprise if the business enterprise:

- (1) Has its principal office located physically in the District of Columbia;
- (2) Requires that its chief executive officer and the highest level managerial employees of the business enterprise maintain their offices and perform their managerial functions in the District;

(2A) Meets 1 of the 4 following standards:

(A) More than 50% of the assets of the business enterprise, excluding bank accounts, are located in the District;

(B) More than 50% of the employees of the business enterprise are residents of the District;

(C) The owners of more than 50% of the business enterprise are residents of the District; or

(D) More than 50% of the total sales or other revenues are derived from transactions of the business enterprise in the District; and

(3)(A) Is licensed pursuant to Chapter 28 of Title 47;

(B) Is subject to the tax levied under Chapter 18 of Title 47; or

(C) Is a business enterprise identified in § 47-1808.01(1) through (5) and more than 50% of the business is owned by residents of the District.

(Oct. 20, 2005, D.C. Law 16-33, § 2331, 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-192, § 2132(a), 53 DCR 6899; July 18, 2008, D.C. Law 17-207, § 2(f), 55 DCR 6107.)

Effect of amendments. — D.C. Law 16-192, in subsec. (a)(2), deleted “and” from the end; and added subsec. (a)(2A).

D.C. Law 17-207, in par. (2A), substituted “Meets 1” for “Meets 3”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of the Department of Small and Local Business Development Subcontracting Clarification Temporary Amendment Act of 2006 (D.C. Law 16-214, March 6, 2007, law notification 54 DCR 2761).

For temporary (225 day) amendment of section, see § 2(f) of the Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Temporary Amendment Act of 2007 (D.C. Law 17-96, January 29, 2008, law notification 55 DCR 3403).

Emergency legislation. — For temporary (90 day) addition, see § 2331 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2132(a) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2132(a) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2(c) of Department of Small and Local Business Development Subcontracting Clarification Emergency Amendment Act of 2006 (D.C. Act 16-513, October 25, 2006, 53 DCR 9091).

For temporary (90 day) amendment of section, see § 2(c) of Department of Small and Local Business Development Subcontracting Clarification Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-575, December 19, 2006, 54 DCR 24).

For temporary (90 day) amendment of section, see § 2132(a) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 2(f) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Emergency Amendment Act of 2007 (D.C. Act 17-156, October 18, 2007, 54 DCR 10919).

For temporary (90 day) amendment of section, see § 2(f) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-251, January 23, 2008, 55 DCR 1259).

For temporary (90 day) addition of sections, see §§ 2 to 4 of Department of Transportation Streetscape Construction Survival Fund Emergency Act of 2010 (D.C. Act 18-658, December 28, 2010, 58 DCR 63).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 16-192. — Law 16-192, the “Fiscal Year Budget Support Act of 2006”, was introduced in Council and assigned Bill No. 16-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 9, 2006, and June 6, 2006, respectively. Signed by the Mayor on August 8, 2006, it was assigned Act No. 16-476 and transmitted to both Houses of Congress for its review. D.C. Law 16-192 became effective on March 2, 2007.

Legislative history of Law 17-207. — For Law 17-207, see notes following § 2-218.02.

Short title. — Short title: Section 2131 of D.C. Law 16-192 provided that subtitle K of title II of the act may be cited as the “Local, Small, and Disadvantaged Businesses Enhancement Amendment Act of 2006”.

§ 2-218.32. Small business enterprises.

(a) A business enterprise shall be eligible for certification as a small business enterprise if the business enterprise:

(1)(A) Is a local business enterprise; or

(B) Repealed.

(2) Is independently owned, operated, and controlled; and

(3)(A) Is certified by the United States Small Business Administration as a small business concern under the Small Business Act, approved July 18, 1958 (72 Stat. 863; 15 U.S.C. § 631 et seq.); or

(B) Has had average annualized gross receipts for the 3 years preceding certification not exceeding the following limits:

Construction, Heavy (Street and Highways,

Bridges, etc.)	\$23 million
Construction, Building (General Construction, etc.)	\$21 million
Construction, Specialty Trades	\$13 million
Goods and Equipment	\$20 million
General Services	\$19 million
Professional Services, Personal Services (Hotel, Beauty, Laundry, etc.)	\$5 million
Professional Services, Business Services	\$10 million
Professional Services, Health and Legal Services	\$10 million
Professional Services, Health Facilities Management	\$19 million
Manufacturing Services	\$10 million
Transportation and Hauling Services	\$13 million
Financial Institutions	\$300 million.

(b) A business enterprise that is affiliated with another business enterprise through common ownership, management, or control shall be eligible for certification as a small business enterprise if:

(1) The business enterprise seeking certification as a small business enterprise is a local business enterprise;

(2) The consolidated financial statements of the affiliated business enterprises do not exceed the average annualized gross receipt limits established by subsection (a)(3)(B) of this section; and

(3) In the event of a parent-subsidiary affiliation, the parent company qualifies for certification as a small business enterprise.

(c) If a business enterprise seeking certification as a small business enterprise is affiliated only with one or more business enterprises that are in a different line of business, subsection (b) of this section shall not apply, and the business enterprise shall be eligible for certification as a small business enterprise if it meets the requirements of subsection (a) of this section.

(Oct. 20, 2005, D.C. Law 16-33, § 2332, 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-192, § 2132(b), 53 DCR 6899.)

Effect of amendments. — D.C. Law 16-192 repealed subsec. (a)(1)(B); and, in subsec. (b)(1), deleted “or a qualified metropolitan area business enterprise” following “local business enterprise”. Prior to repeal, subsec. (a)(1)(B) read as follows: “(B) Is a qualified metropolitan area business enterprise;”

Emergency legislation. — For temporary (90 day) addition, see § 2332 of Fiscal Year 2006 Budget Support Congressional Review Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2132(b) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2132(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2132(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 2-218.31.

§ 2-218.33. Disadvantaged business enterprises.

(a) A business enterprise shall be eligible for certification as a disadvantaged business enterprise if the business enterprise is:

(1) Owned, operated, and controlled by economically disadvantaged individuals; and

(2)(A) Is a local business enterprise; or

(B) Repealed.

(b) A business enterprise that is affiliated with another business enterprise through common ownership, management, or control shall be eligible for certification as a disadvantaged business enterprise if:

(1) The business enterprise seeking certification as a disadvantaged business enterprise is a local business enterprise;

(2) In the event of a parent-subsidiary affiliation, both enterprises meet the requirements of subsection (a) of this section; and

(3) The business enterprise has an average annualized gross receipts totaling \$75 million or less.

(Oct. 20, 2005, D.C. Law 16-33, § 2333, 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-192, § 2132(c), 53 DCR 6899; Apr. 20, 2010, D.C. Law 18-141, § 2(f), 57 DCR 1485.)

Effect of amendments. — D.C. Law 16-192 repealed subsec. (a)(2)(B); and, in subsec. (b)(1), deleted “or a qualified metropolitan area business enterprise” following “local business enterprise”. Prior to repeal, subsec. (a)(2)(B) read as follows: “(B) Is a qualified metropolitan area business enterprise;”

D.C. Law 18-141, in subsec. (b), deleted “and” from the end of par. (1); substituted “; and” for a period at the end of par. (2), and added par. (3).

Emergency legislation. — For temporary (90 day) addition, see § 2333 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2132(c) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2132(c) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2132(c) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 2-218.31.

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

§ 2-218.34. Qualified metropolitan area business enterprises. [Repealed].

Repealed.

(Oct. 20, 2005, D.C. Law 16-33, § 2334, 52 DCR 7503; Mar. 3, 2007, D.C. Law 16-192, § 2132(d), 53 DCR 6899.)

Emergency legislation. — For temporary (90 day) addition, see § 2334 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) repeal of section, see

§ 2132(d) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) repeal of section, see § 2132(d) of Fiscal Year 2007 Budget Support

Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) repeal of section, see § 2132(d) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007

(D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 2-218.31.

§ 2-218.35. Resident-owned businesses.

A business enterprise shall be eligible for certification as a resident-owned business if it meets the definition of resident-owned business pursuant to § 2-218.02.

(Oct. 20, 2005, D.C. Law 16-33, § 2335, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2335 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

§ 2-218.36. Longtime resident businesses.

A business enterprise shall be eligible for certification as a longtime resident business if it meets the definition of longtime resident business pursuant to § 2-218.02.

(Oct. 20, 2005, D.C. Law 16-33, § 2336, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2336 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

CASE NOTES

In general.

Even if company that submitted lowest bid on alleyway rehabilitation project was likely to succeed on the merits of its claim challenging District of Columbia Code provision granting preferential treatment in the award of city contracts to businesses that had operated in the District for at least twenty years, the potential of harm to the District and the public interest in the short run far outweighed any limited and short-term financial harm to the company, and thus preliminary injunction en-

joining application of the Code provision was not warranted; company faced at most a temporary economic loss if it lost alleyway contract prior to the resolution of its suit, and, following amendment to the Code, the company was eligible to receive preferential treatment, but grant of injunction would pose real danger of harm to both the District and the public interest should there be a delay in the performance of the project. *Capitol Paving of D.C., Inc. v. District of Columbia*, 496 F.Supp.2d 54, 2007 U.S. Dist. LEXIS 37287 (2007).

§ 2-218.37. Local business enterprises with principal offices located in an enterprise zone.

A local business enterprise shall be eligible for certification as a local business enterprise with principal offices located in an enterprise zone if its principal offices are located in an enterprise zone as defined by § 2-218.02.

(Oct. 20, 2005, D.C. Law 16-33, § 2337, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2337 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

§ 2-218.38. Veteran-owned business enterprises.

A business enterprise shall be eligible for certification as a veteran-owned business enterprise if the business enterprise:

- (1) Meets the definition of a small business enterprise as described in § 2-218.32;
- (2) Is not less than 51% owned and operated by one of more veterans (as defined in 38 U.S.C. § 101(2));
- (3) In the case of any publicly owned business, not less than 51% of the stock of which is owned by one or more veterans; and
- (4) One or more veterans control the management and daily operations.

(Oct. 20, 2005, D.C. Law 16-33, § 2338, as added Apr. 20, 2010, D.C. Law 18-141, § 2(g), 57 DCR 1485.)

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

§ 2-218.39. Local manufacturing business enterprises.

A business enterprise shall be eligible for certification as a local manufacturing business enterprise if the business enterprise:

- (1) Meets the definition of a local business enterprise as described in § 2-218.31;
- (2) Makes a product through a process involving raw materials, components, or assemblies, usually on a large scale, with different operations divided among different workers;
- (3) Has an annual revenue of \$2 million in the manufactured product; and
- (4) Has its principal location of manufacturing in the District of Columbia.

(Oct. 20, 2005, D.C. Law 16-33, § 2339, as added Apr. 20, 2010, D.C. Law 18-141, § 2(g), 57 DCR 1485.)

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

§ 2-218.39a. Joint venture business enterprises.

(a) A business enterprise shall be eligible for certification as a joint venture business enterprise if the joint venture has a member that owns a majority interest or minority interest in the joint venture business enterprise and meets the definition of a certified business enterprise pursuant to § 2-218.02.

(b) For the purposes of this section, the term:

(1) “Majority interest” means:

(A) More than 50% of the total combined voting power of all classes of

stock of the joint venture business enterprise or more than 50% of the total value of all of the joint venture business enterprise;

(B) A financial contribution to the enterprise of more than 50%; and

(C) More than 50% of the total interest in the capital, profits, and loss, or beneficial interest in the joint venture business enterprise.

(2) "Minority interest" means:

(A) Less than 50% of the total combined voting power of all classes of stock of the joint venture business enterprise or less than 50% of the total value of all of the joint venture business enterprise;

(B) A financial contribution to the enterprise of less than 50%; and

(C) Less than 50% of the total interest in the capital, profits, and loss, or beneficial interest in the joint venture business enterprise.

(c) The Department shall consider the defined contributions and defined benefits provided by each member of the joint venture, which shall be demonstrated by the following information:

(1) Organizational documents of the joint venture, including the joint venture agreement, the operating agreement, and any other agreement between or among the members; and

(2) Documentation of the financial contribution of each member, including access to bank records and organizational resolutions and agreements.

(d) Decisions concerning the affairs of the business shall require the consent of those members with voting rights holding at least a majority interest in the business.

(Oct. 20, 2005, D.C. Law 16-33, § 2339a, as added Apr. 20, 2010, D.C. Law 18-141, § 2(g), 57 DCR 1485.)

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

Subpart 2—Requirements of programs.

§ 2-218.41. Goals for District agencies with respect to contracting and procurement with small business enterprises.

(a) Each agency, including an agency that contracts or procures in whole or in part through the Office of Contracting and Procurement, shall exercise its contracting and procurement authority so as to meet, on an annual basis, the goal of procuring and contracting 50% of the dollar volume of its goods and services, including construction goods and services, to small business enterprises.

(b) The dollar volume referenced in subsection (a) of this section shall be based on the expendable budget of the agency.

(Oct. 20, 2005, D.C. Law 16-33, § 2341, 52 DCR 7503.)

Emergency legislation. — For temporary 2006 Budget Support Emergency Act of 2005 (90 day) addition, see § 2341 of Fiscal Year (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

§ 2-218.42. Required programs, procedures, and policies to achieve contracting and procurement goals.

To achieve the goals set forth in this subchapter, the Department shall establish by rules issued pursuant to § 2-218.72, programs for certified business enterprises. The Department shall include among these programs:

- (1) A bid preference mechanism for local and disadvantaged business enterprises, resident-owned businesses, resident businesses, and local business enterprises with principal offices located in an enterprise zone;
- (2) A set-aside program for small business enterprises; and
- (3) A set-aside program for certified business enterprises for the District of Columbia Supply Schedule.

(Oct. 20, 2005, D.C. Law 16-33, § 2342, 52 DCR 7503; July 18, 2008, D.C. Law 17-207, § 2(g), 55 DCR 6107; Mar. 25, 2009, D.C. Law 17-353, § 243, 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-207, in the introductory language, substituted “certified business enterprises” for “local and disadvantaged business enterprises, resident-owned businesses, resident businesses, and local business enterprises with principal offices located in an enterprise zone”; and, in par. (3), substituted “certified” for “local, small, and disadvantaged”.

D.C. Law 17-353 validated previously made technical corrections in the introductory language and par. (3).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(g) of the Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Temporary Amendment Act of 2007 (D.C. Law 17-96, January 29, 2008, law notification 55 DCR 3403).

Emergency legislation. — For temporary (90 day) addition, see § 2342 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2(g) of Department of Small and

Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Emergency Amendment Act of 2007 (D.C. Act 17-156, October 18, 2007, 54 DCR 10919).

For temporary (90 day) amendment of section, see § 2(g) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-251, January 23, 2008, 55 DCR 1259).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 17-207. — For Law 17-207, see notes following § 2-218.02.

Legislative history of Law 17-353. — Law 17-353, the “Technical Amendments Act of 2008”, was introduced in Council and assigned Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

§ 2-218.43. Bid and proposal preferences.

(a) In evaluating bids or proposals, agencies shall award preferences as follows:

- (1) In the case of proposals, points shall be granted as follows:
 - (A) Three points for a small business enterprise;
 - (B) Five points for a resident-owned business;
 - (C) Five points for a longtime resident business;

- (D) Two points for a local business enterprise;
- (E) Two points for a local business enterprise with its principal office located in an enterprise zone;
- (F) Two points for a disadvantaged business enterprise;
- (G) Two points for a veteran-owned business enterprise; and
- (H) Two points for a local manufacturing business enterprise.

(2) In the case of bids, a percentage reduction in price shall be granted as follows:

- (A) Three percent for a small business enterprise;
- (B) Five percent for a resident-owned business;
- (C) Ten percent for a longtime resident business;
- (D) Two percent for a local business enterprise;
- (E) Two percent for a local business enterprise with its principal office located in an enterprise zone; and
- (F) Two percent for a disadvantaged business enterprise.

(b) A certified business enterprise shall be entitled to any or all of the preferences provided in this section, but in no case shall a certified business enterprise be entitled to a preference of more than 12 points or a reduction in price of more than 12 percent.

(Oct. 20, 2005, D.C. Law 16-33, § 2343, 52 DCR 7503; Mar. 14, 2007, D.C. Law 16-266, § 2(b), 54 DCR 829; July 18, 2008, D.C. Law 17-207, § 2(h), 55 DCR 6107; Apr. 20, 2010, D.C. Law 18-141, § 2(h), 57 DCR 1485.)

Effect of amendments. — D.C. Law 16-266, in subsec. (a)(1)(B), substituted “Five points” for “Three points”; and, in (a)(2)(B), substituted “Five percent” for “Three percent”.

D.C. Law 17-207, in pars. (1)(B) and (2)(B), inserted “a” preceding “resident-owned”.

D.C. Law 18-141, in subsec. (a)(1), substituted “Five points” for “Ten points” in subpar. (C), deleted “and” from the end of subpar. (E); substituted “; and” for a period at the end of subpar. (F), and added subpars. (G) and (H).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(h) of the Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Temporary Amendment Act of 2007 (D.C. Law 17-96, January 29, 2008, law notification 55 DCR 3403).

Emergency legislation. — For temporary (90 day) addition, see § 2343 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2(h) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Emergency Amendment Act of 2007 (D.C. Act 17-156, October 18, 2007, 54 DCR 10919).

For temporary (90 day) amendment of section, see § 2(h) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-251, January 23, 2008, 55 DCR 1259).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 16-266. — For Law 16-266, see notes following § 2-218.02.

Legislative history of Law 17-207. — For Law 17-207, see notes following § 2-218.02.

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

CASE NOTES

In general.

Even if company that submitted lowest bid on alleyway rehabilitation project was likely to succeed on the merits of its claim challenging District of Columbia Code provision granting preferential treatment in the award of city

contracts to businesses that had operated in the District for at least twenty years, the potential of harm to the District and the public interest in the short run far outweighed any limited and short-term financial harm to the company, and thus preliminary injunction en-

joining application of the Code provision was not warranted; company faced at most a temporary economic loss if it lost alleyway contract prior to the resolution of its suit, and, following amendment to the Code, the company was eligible to receive preferential treatment, but

grant of injunction would pose real danger of harm to both the District and the public interest should there be a delay in the performance of the project. *Capitol Paving of D.C., Inc. v. District of Columbia*, 496 F.Supp.2d 54, 2007 U.S. Dist. LEXIS 37287 (2007).

§ 2-218.44. Mandatory set-asides of small contracts for small business enterprises.

(a) Except as provided in § 2-218.45, each agency shall set aside every contract or procurement of \$100,000 or less for small business enterprises; provided, that the agency shall not be required to set aside a contract or procurement if the agency determines in writing that there are not at least 2 responsible certified small business enterprises that can provide the services or goods which are the subject of the contract.

(b) An agency may refuse to award a contract or procurement set aside under this section, and may thereafter issue the contract or procurement in the open market if the agency determines in writing that the bids for the contract or procurement set aside for a small business enterprise are believed to be 12% or more above the likely price on the open market.

(Oct. 20, 2005, D.C. Law 16-33, § 2344, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2344 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

§ 2-218.45. Mandatory set-asides of contracts in the District of Columbia Supply Schedule for small business enterprises.

Each agency shall set aside every contract of \$100,000 or less for the District of Columbia Supply Schedule for small business enterprises; provided, that the agency shall not be required to set aside a contract if the agency determines in writing that there are not at least 2 responsible certified small business enterprises on the DCSS that can provide the services or goods which are the subject of the contract.

(Oct. 20, 2005, D.C. Law 16-33, § 2345, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2345 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

§ 2-218.46. Performance and subcontracting requirements for construction and non-construction contracts; subcontracting plans.

(a)(1) All construction contracts in excess of \$250,000 shall include the following requirements:

(A) At least 35% of the dollar volume shall be subcontracted to small business enterprises; provided, that the costs of materials, goods, and supplies shall not be counted towards the 35% subcontracting requirement unless such materials, goods, and supplies are purchased from small business enterprises; or

(B) If there are insufficient qualified small business enterprises to completely fulfill the requirement of subparagraph (A) of this paragraph, then the subcontracting requirement may be satisfied by subcontracting 35% of the dollar volume to any certified business enterprises; provided, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

(2) All non-construction contracts in excess of \$250,000, unless a waiver has been approved by the Office of Contracting and Procurement, shall include the following requirements:

(A) At least 35% of the dollar volume shall be subcontracted to small business enterprises; provided, that the costs of materials, goods, and supplies shall not be counted towards the 35% subcontracting requirement unless such materials, goods, and supplies are purchased from small business enterprises; or

(B) If there are insufficient qualified small business enterprises to completely fulfill the requirement of subparagraph (A) of this paragraph, then the subcontracting requirement may be satisfied by subcontracting 35% of the dollar volume to any certified business enterprises; provided, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

(3) For the purposes of this section, a business enterprise certified as a small business enterprise, local business enterprise, or disadvantaged business enterprise shall not have to comply with the requirements set forth in paragraphs (1) or (2) of this subsection.

(b)(1)(A) Each construction contract for which a certified business enterprise is selected as a prime contractor and is granted points or a price reduction pursuant to § 2-218.43 or is selected through a set-aside program under this subpart shall include a requirement that the business enterprise perform at least 35% of the contracting effort, excluding the cost of materials, goods, and supplies, with its own organization and resources and, if it subcontracts, 35% of the subcontracted effort, excluding the cost of materials, goods, and supplies, shall be with certified business enterprises.

(B) If the total of the contracting effort, excluding the cost of materials, good, and supplies, proposed to be performed by certified business enterprises is less than the amount required by subparagraph (A) of this paragraph, then the business enterprise shall not be eligible to receive preference points or price reductions for a period of not less than 2 years.

(2)(A) Each construction contract for which a joint venture is selected as a prime contractor and is granted points or a price reduction pursuant to § 2-218.43 or is selected through a set-aside program under this subpart shall include a requirement that the certified business enterprise perform at least 50% of the contracting effort, excluding the cost of materials, goods, and supplies, with its own organization and resources and, if the joint venture subcontracts, 35% of the subcontracted effort, excluding the cost of materials, goods, and supplies, shall be with certified business enterprises.

(B) If the total of the contracting effort, excluding the cost of materials, good, and supplies, proposed to be performed by certified business enterprises is less than the amount required by subparagraph (A) of this paragraph, then the business enterprise shall not be eligible to receive preference points or price reductions for a period of not less than 2 years.

(c) Each construction contract of \$1 million or less for which a certified business enterprise is selected as a prime contractor and is granted points or a price reduction pursuant to § 2-218.43 or is selected through a set-aside program under this subpart shall include a requirement that the business enterprise perform at least 50% of the on-site work with its own work force.

(d) Bids or proposals responding to a solicitation, including an open market solicitation, shall be deemed nonresponsive and shall be rejected if the law requires subcontracting and the prime contractor fails to submit a subcontracting plan as part of its bid or proposal. A certified business enterprise subcontracting plan shall specify the following:

- (1) The name and address of the subcontractor;
- (2) Whether the subcontractor is currently certified as a certified business enterprise;
- (3) The scope of work to be performed by the subcontractor; and
- (4) The price to be paid by the contractor to the subcontractor.

(e) No prime contractor shall be allowed to amend the subcontracting plan filed as part of its bid or proposal except with the consent of the contracting officer and the Director. Any reduction in the dollar volume of the subcontracted portion resulting from such amendment of the plan shall insure to the benefit of the District.

(f) No multiyear contracts or extended contracts in which the options or extensions exceed \$1 million in value, which are not in compliance with this subchapter at the time of the contemplated exercise of the option or extension, shall be renewed or extended, and any such option or extension shall be void.

(g) The subcontracting requirements of this section may be waived pursuant to § 2-218.51.

(h) A prime contractor shall submit to the contracting officer and the Director copies of the executed contracts with the subcontracts identified in the subcontracting plan. Failure to submit copies of the executed contracts shall render the underlying contract voidable by the District.

(i) Beginning on April 20, 2010, each contractor or beneficiary shall provide a copy of the contract, which includes the subcontracting plan for utilization of certified business enterprises, within 10 business days of its execution to the Office of District of Columbia Auditor. A quarterly report shall be provided to

the Department and the Office of District of Columbia Auditor by the developer or beneficiary, which shall include a list of each subcontractor identified in the subcontracting plan for utilization of certified business enterprises, and for each subcontract:

- (1) The price to be paid by the contractor to the subcontractor;
- (2) A description of the goods procured or the services contracted for; and
- (3) The amount paid by the contractor to the subcontractor.

(Oct. 20, 2005, D.C. Law 16-33, § 2346, 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-192, § 2132(e), 53 DCR 6899; July 18, 2008, D.C. Law 17-207, § 2(i), 55 DCR 6107; Apr. 20, 2010, D.C. Law 18-141, § 2(i), 57 DCR 1485; May 27, 2010, D.C. Law 18-159, § 2(b), 57 DCR)

Effect of amendments. — D.C. Law 16-192, in the section heading, inserted “and non-construction” following “construction”; added subsec. (a)(3); in subsec. (e), substituted “dollar volume” for “dollar value”; and added subsec. (h).

D.C. Law 17-207 rewrote subsec. (a); and, in subssecs. (b), (c), and (d), substituted “certified” for “small, local, or disadvantaged”.

D.C. Law 18-141, in subsec. (a)(2), substituted “excess of \$250, 000, unless a waiver has been approved by the Office of Contracting and Procurement,” for “which a portion of the work is subcontracted”; added subsec. (a)(3); in subsec. (d), substituted “the law requires subcontracting” for “the solicitation requires submission of a certified business enterprise subcontracting plan”; and added subsec. (i).

D.C. Law 18-159, in subsec. (i), substituted “each contractor or beneficiary shall provide a copy of the contract,” for “each developer or beneficiary shall provide a copy of the certified business agreement.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Department of Small and Local Business Development Clarification Temporary Amendment Act of 2005 (D.C. Law 16-49, February 9, 2006, law notification 53 DCR 1457).

For temporary (225 day) amendment of section, see § 2(d) of the Department of Small and Local Business Development Subcontracting Clarification Temporary Amendment Act of 2006 (D.C. Law 16-214, March 6, 2007, law notification 54 DCR 2761).

For temporary (225 day) amendment of section, see § 2(i) of the Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Temporary Amendment Act of 2007 (D.C. Law 17-96, January 29, 2008, law notification 55 DCR 3403).

Emergency legislation. — For temporary (90 day) addition, see § 2346 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2(a) of Department of Small and Local Business Development Clarification Emergency Act of 2005 (D.C. Act 16-191, October 28, 2005, 52 DCR 10026).

For temporary (90 day) amendment of section, see § 2(a) of Department of Small and Local Business Development Clarification Congressional Review Emergency Act of 2006 (D.C. Act 16-301, February 27, 2006, 53 DCR 1883).

For temporary (90 day) amendment of section, see § 2132(e) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2132(e) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2(d) of Department of Small and Local Business Development Subcontracting Clarification Emergency Amendment Act of 2006 (D.C. Act 16-513, October 25, 2006, 53 DCR 9091).

For temporary (90 day) amendment of section, see § 2(d) of Department of Small and Local Business Development Subcontracting Clarification Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-575, December 19, 2006, 54 DCR 24).

For temporary (90 day) amendment of section, see § 2132(e) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 2(i) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Emergency Amendment Act of 2007 (D.C. Act 17-156, October 18, 2007, 54 DCR 10919).

For temporary (90 day) amendment of section, see § 2(i) of Department of Small and Local Business Development Subcontracting

Clarification, Benefit Expansion, and Grant-making Authority Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-251, January 23, 2008, 55 DCR 1259).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 2-218.31.

Legislative history of Law 17-207. — For Law 17-207, see notes following § 2-218.02.

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

Legislative history of Law 18-159. — Law 18-159, the “Small Business Stabilization and Job Creation Strategy Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-457, which was referred to the Committee on Economic Development. The bill was adopted on first and second readings on February 2, 2010, and March 2, 2010, respectively. Signed by the Mayor on March 25, 2010, it was assigned Act No. 18-350 and transmitted to both Houses of Congress for its review. D.C. Law 18-159 became effective on May 27, 2010.

CASE NOTES

In general.

Even if company that submitted lowest bid on alleyway rehabilitation project was likely to succeed on the merits of its claim challenging District of Columbia Code provision granting preferential treatment in the award of city contracts to businesses that had operated in the District for at least twenty years, the potential of harm to the District and the public interest in the short run far outweighed any limited and short-term financial harm to the company, and thus preliminary injunction en-

joining application of the Code provision was not warranted; company faced at most a temporary economic loss if it lost alleyway contract prior to the resolution of its suit, and, following amendment to the Code, the company was eligible to receive preferential treatment, but grant of injunction would pose real danger of harm to both the District and the public interest should there be a delay in the performance of the project. *Capitol Paving of D.C., Inc. v. District of Columbia*, 496 F.Supp.2d 54, 2007 U.S. Dist. LEXIS 37287 (2007).

§ 2-218.47. Unbundling requirement.

The Mayor shall establish procedures to ensure that solicitations are subdivided and unbundled and that smaller contracts are created to the extent feasible and fiscally prudent.

(Oct. 20, 2005, D.C. Law 16-33, § 2347, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2347 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

§ 2-218.48. Enforcement and penalties for willful breach of subcontracting plan.

(a) There shall be a rebuttable presumption that a contractor willfully breached a subcontracting plan for utilization of certified business enterprises in the performance of a contract if the contractor:

- (1) Fails to submit any required subcontracting plan monitoring or compliance report;
- (2) Submits a monitoring or compliance report containing a false statement; or
- (3) Fails to disclose required information.

(b) The presumption that a contractor willfully breached a subcontracting plan for utilization of certified business enterprises may be rebutted with a showing, by clear and convincing evidence, of full compliance with the

requirements set forth in the subcontracting plan for utilization of certified business enterprises.

(c) A contractor that is found to have willfully breached a subcontracting plan for utilization of certified business enterprises shall be subject to the imposition of penalties, including monetary fines of \$ 15,000 or 5% of the total amount of the work that the contractor was to subcontract to certified business enterprises, whichever is greater, for each breach.

(Oct. 20, 2005, D.C. Law 16-33, § 2348, 52 DCR 7503; July 18, 2008, D.C. Law 17-207, § 2(j), 55 DCR 6107; Apr. 20, 2010, D.C. Law 18-141, § 2(j), 57 DCR 1485; May 27, 2010, D.C. Law 18-159, § 2(c), 57 DCR 3006.)

Effect of amendments. — D.C. Law 17-207 substituted “certified business enterprises” for “local, small, or disadvantaged businesses” in two places.

D.C. Law 18-141 rewrote the section, which had read as follows: “The willful breach by a contractor of a subcontracting plan for utilization of certified business enterprises in the performance of a contract, the failure to submit any required subcontracting plan monitoring or compliance report, or the deliberate submission of falsified data may be enforced by the Department through the imposition of penalties, including monetary fines of \$15,000 or 5% of the total amount of the work that the contractor was to subcontract to certified business enterprises, whichever is greater, for each such breach, failure, or falsified submission.”

D.C. Law 18-159, in subsec. (a), deleted “or” from the end of par. (1), rewrote par. (2), and added par. (3).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(j) of the Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Temporary Amendment Act of 2007

(D.C. Law 17-96, January 29, 2008, law notification 55 DCR 3403).

Emergency legislation. — For temporary (90 day) addition, see § 2348 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2(j) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Emergency Amendment Act of 2007 (D.C. Act 17-156, October 18, 2007, 54 DCR 10919).

For temporary (90 day) amendment of section, see § 2(j) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-251, January 23, 2008, 55 DCR 1259).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 17-207. — For Law 17-207, see notes following § 2-218.02.

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

Legislative history of Law 18-159. — For Law 18-159, see notes following § 2-218.46.

§ 2-218.49. Other procedures and programs.

(a) The Mayor shall establish policies and procedures to maximize the participation of certified business enterprises in the contracting and procurement processes, including:

(1) A procedure whereby an agency may waive bid security requirements on contracts in excess of \$100,000, where the waiver is appropriate to achieve the purposes of this subchapter; and

(2) A policy whereby an agency shall make advance payments to a certified contractor, where the payments are necessary to achieve the purposes of this subchapter.

(b) The Mayor may establish a pilot set-aside program for small business enterprises with gross revenues of \$5 million or less.

(Oct. 20, 2005, D.C. Law 16-33, § 2349, 52 DCR 7503; July 18, 2008, D.C. Law 17-207, § 2(k), 55 DCR 6107.)

Effect of amendments. — D.C. Law 17-207, in subsec. (a), substituted “certified” for “small, local, and disadvantaged”.

Emergency legislation. — For temporary (90 day) addition, see § 2349 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 17-207. — For Law 17-207, see notes following § 2-218.02.

§ 2-218.49a. Equity and development participation.

(a) Local business enterprises, small business enterprises, or disadvantaged business enterprises shall receive 20% in equity participation and 20% in development participation in all development projects supported by District funds and in all development projects that take place on District-owned property.

(a-1)(1) No more than 25% of the total 20% equity participation requirement (“equal to 5%”) set forth in subsection (a) of this section may be met by a certified business enterprise providing development services in lieu of a cash equity investment that will be compensated by the developer in the future at a date certain (“sweat equity contribution”).

(2) The developer and the certified business enterprise shall sign a service agreement describing the following:

(A) A detailed description of the scope of work that the certified business enterprise will perform;

(B) The dollar amount that the certified business enterprise will be compensated for its services and the amount the certified business enterprise is forgoing as an investment in a project;

(C) The date or time period when the certified business enterprise will receive compensation;

(D) The return, if any, the certified business enterprise will receive on its sweat equity contribution; and

(E) An explanation of when the certified business enterprise will receive its return as compared to other team members or investors.

(3) If a developer is unable to meet the 20% equity participation requirement, including sweat equity contribution and cash equity investment, the developer shall pay to the District the outstanding cash equity amount as a fee in lieu of the unmet equity participation requirement. Any fee collected in accordance with this provision shall be deposited into the Small Business Micro Loan Fund established by § 2-218.75(b).

(4) Any administrative costs associated with subsection (a)(3) of this section shall be reimbursed through fees collected by the District as a result of unmet equity and development participation requirements. The collected fees shall be used as follows:

(A) Fifty percent shall be used to support vocational training programs benefitting District residents.

(B) The remainder shall be used to provide:

(i) Low-interest loans for small businesses located in a Main Street, Great Street, or underserved area in the District; and

(ii) Grants to small businesses negatively impacted by District subsidized construction or street-scaping projects.

(C) The prescribed uses of the Small Business Micro Loan Fund established by this paragraph shall be in addition to the uses of the Small Business Micro Loan Fund established by § 2-218.75(b).

(5) The Department of Small and Local Business Development shall:

(A) Issue a solicitation for the grant and loan applications described in paragraph (4)(B) of this subsection;

(B) Manage, receive, and review the grant and loan applications; and

(C) Determine which vocational training programs and small businesses shall receive assistance pursuant to paragraph (4)(A) and (B) of this subsection.

(b) The participation requirement shall include all development projects undertaken by government corporations and all development projects resulting from contractual relationships where District owned real property is transferred to a third party.

(c) The Mayor shall promulgate proposed rules to implement the provisions of this section within 90 days of March 2, 2007. The Mayor shall submit the proposed rules to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 45-day review period, the proposed rules shall be deemed approved.

(d) This section shall not apply if the entity that controls the development project is an entity tax-exempt under section 501(c) of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)), or other not-for-profit entity.

(e) This section shall not apply to any development project for which a contract for purchase of one or more parcels of real property has been executed prior to March 2, 2007.

(Oct. 20, 2005, D.C. Law 16-33, § 2349a, as added Mar. 2, 2007, D.C. Law 16-192, § 2132(f), 53 DCR 6899; Apr. 20, 2010, D.C. Law 18-141, § 2(k), 57 DCR 1485; Apr. 8, 2011, D.C. Law 18-357, § 2(a), 58 DCR 763.)

Effect of amendments. — D.C. Law 18-141 rewrote subsec. (a); and added subsec. (a-1).

D.C. Law 18-357, in subsec. (a-1)(3), substituted “in lieu of the unmet equity participation requirement. Any fee collected in accordance with this provision shall be deposited into the Small Business Micro Loan Fund established by § 2-218.75(b).” for “in lieu of the unmet equity participation requirement.”; added subsec. (a-1)(4)(C); and, in subsec. (a-1)(5), substituted “Department of Small and Local Business Development” for “Office of the Deputy Mayor for Planning and Economic Development”.

Emergency legislation. — For temporary

(90 day) addition of section, see § 2132(f) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition of section, see § 2132(f) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition of section, see § 2132(f) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of sec-

tion, see § 2(a) of Alternative Equity Payment Allocation Emergency Amendment Act of 2010 (D.C. Act 18-589, October 20, 2010, 57 DCR 10143).

For temporary (90 day) amendment of section, see § 2(a) of Alternative Equity Payment Allocation Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-1, February 2, 2011, 58 DCR 1236).

Legislative history of Law 16-192. — For Law 16-192, see notes following § 2-218.31.

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

Legislative history of Law 18-357. — Law 18-357, the “Alternative Equity Payment Allocation Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-1047, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 19, 2011, it was assigned Act No. 18-357 and transmitted to both Houses of Congress for its review. D.C. Law 18-357 became effective on April 8, 2011.

§ 2-218.50. Special requirements for government corporations.

(a) A government corporation shall comply with all provisions of this subchapter.

(b)(1)(A) A government corporation shall take all measures as shall be reasonably necessary to assure that all contracts entered into by the government corporation, or any agency or subsidiary of the government corporation, with respect to each major phase of the development and construction of a project undertaken by the government corporation, including contracts for professional services, architectural, engineering, and other construction-related services and construction trade work, shall provide that at least 35% of the work on the project shall be awarded to small business enterprises; provided, that the costs of materials, goods, and supplies shall not be counted towards the 35% subcontracting requirement unless such materials, goods, and supplies are purchased from small business enterprises.

(B) If there are insufficient qualified small business enterprises to fulfill the small business enterprise contracting requirement, then the subcontracting requirement may be satisfied by subcontracting 35% of the dollar volume of the project to any certified business enterprises; provided, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

(2) Of the work required to be awarded pursuant to paragraph (1) of this subsection, at least 10% of those business enterprises shall be located in the ward in which the work is being performed.

(3) If 35% of the work required to be awarded pursuant to paragraph (1) of this subsection, is unattainable, the government corporation shall report this fact to the Council for reconsideration of this requirement.

(c) The subcontracting requirement of subsection (b) of this section may be waived pursuant to § 2-218.51.

(d)(1) A government corporation shall take all measures as shall be reasonably necessary to assure that all contracts entered into by the government corporation, or any agency or subsidiary of the government corporation, with respect to the development and construction of a project undertaken by the government corporation, comply with the First Source Employment requirements of subchapter X of Chapter 2 of Title 2 [§ 2-219.01 et seq.].

(2) Of the jobs required to be filed pursuant to paragraph (1) of this

subsection, at least 20% of those jobs shall be designated for residents in the ward in which the work is being performed.

(e)(1) A government corporation shall take all measures as shall be reasonably necessary to assure that all contracts entered into by the government corporation or any agency or subsidiary of the government corporation with respect to the development and construction of a project undertaken by the government corporation shall comply with the requirements of subchapter I of Chapter 14 of Title 32 [§ 32-1401 et seq.].

(2)(A) Fifty percent of all apprenticeship hours performed pursuant to any apprenticeship programs related to the construction and operation of a project undertaken by the government corporation shall be performed by District of Columbia residents.

(B) Any prime contractor or subcontractor that fails to make a good faith effort to comply with the requirements of this paragraph shall be subject to a monetary fine in the amount of 5% of the direct or indirect labor costs of the contract. Fines shall be imposed by the Department of Employment Services to be applied to job training programs, subject to appropriations by Congress.

(f) Beginning with the first full quarter after April 20, 2010, each government corporation shall provide a quarterly report for every quarter, except for the 4th quarter, to the Department and to the District of Columbia Auditor within 30 days after the end of each quarter. The 4th quarter and annual report shall be submitted together. A quarterly report shall include the following information:

(1) The dollar volume and percentage of awards to local, small, and disadvantaged business enterprises in construction and development projects;

(2) The dollar volume and percentage of awards to local, small, and disadvantaged business enterprises in development projects as equity partners;

(3) The dollar volume and percentage of awards to certified business enterprises for contracting and procurement of goods and services;

(4) The dollar amount actually expended with local, small, and disadvantaged business enterprises in construction and development projects;

(5) The dollar amount actually expended with certified business enterprises in development projects as equity partners; and

(6) The dollar amount actually expended with certified business enterprises for contracting and procurement of goods and services.

(g) Beginning with fiscal year 2006, each government corporation shall provide an annual report to the Department and to the District of Columbia Auditor within 45 days after the end of each fiscal year. The annual report shall include the information required to be included in the quarterly reports (with the dollar percentages and volumes calculated on an annual basis, including 4th quarter reports).

(h) The District of Columbia Auditor shall monitor government corporation compliance with the reporting requirements of this section.

(i) The Department shall review the annual report of a government corporation to determine whether the planned activities of the government corpo-

ration for the succeeding fiscal year are likely to enable the government corporation to achieve the goals set forth in this section. The Department shall make recommendations concerning activities in which the government corporation should engage in to meet or exceed the requirements set forth in this section. The Department's recommendations shall be submitted to the government corporation, the Commission, the Council, the Mayor, and the District of Columbia Auditor within 30 days of the government corporation's annual report submission.

(j) The Department may review the annual report of a government corporation to determine whether the planned activities of the government corporation for the succeeding fiscal year are likely to enable the government corporation to achieve the goals set forth in this section. The Department may make recommendations concerning activities in which the government corporation should engage in to meet or exceed the requirements set forth in this section. The Department's recommendations, if any, shall be submitted to the government corporation and the District of Columbia Auditor.

(Oct. 20, 2005, D.C. Law 16-33, § 2350, 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-192, § 2132(g), 53 DCR 6899; July 18, 2008, D.C. Law 17-207, § 2(l), 55 DCR 6107; Mar. 3, 2010, D.C. Law 18-111, § 2222(a), 57 DCR 181; Apr. 20, 2010, D.C. Law 18-141, § 2(l), 57 DCR)

Effect of amendments. — D.C. Law 16-192, in subsec. (b)(1)(B), substituted "dollar volume" for "dollar value".

D.C. Law 17-207 rewrote subsec. (b)(1); and, in subssecs. (f)(3) and (g)(2)(A), substituted "certified" for "local, small, and disadvantaged".

D.C. Law 18-111, in subsec. (f), substituted "March 3, 2010" for "October 20, 2005" in the lead-in text, deleted "and" from the end of par. (2), substituted a semicolon for a period at the end of par. (3), and added pars. (4 to (6); in subsec. (g), substituted ", volumes, and amounts" for "and volumes"; rewrote subsec. (i); and, in subsec. (j), substituted "Department" for "Commission" twice, and rewrote the last sentence, which had read as follows: "The Commission's recommendations shall be submitted to the government corporation, the Council, and the Department.".

D.C. Law 18-141 rewrote subssecs. (f), (g), (h), and (i).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(e) of the Department of Small and Local Business Development Subcontracting Clarification Temporary Amendment Act of 2006 (D.C. Law 16-214, March 6, 2007, law notification 54 DCR 2761).

For temporary (225 day) amendment of section, see § 2(k) of the Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Temporary Amendment Act of 2007 (D.C. Law 17-96, January 29, 2008, law notification 55 DCR 3403).

Emergency legislation. — For temporary (90 day) addition, see § 2350 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2132(g) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2132(g) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2(e) of Department of Small and Local Business Development Subcontracting Clarification Emergency Amendment Act of 2006 (D.C. Act 16-513, October 25, 2006, 53 DCR 9091).

For temporary (90 day) amendment of section, see § 2(e) of Department of Small and Local Business Development Subcontracting Clarification Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-575, December 19, 2006, 54 DCR 24).

For temporary (90 day) amendment of section, see § 2132(g) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 2(k) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-

making Authority Emergency Amendment Act of 2007 (D.C. Act 17-156, October 18, 2007, 54 DCR 10919).

For temporary (90 day) amendment of section, see § 2(k) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-251, January 23, 2008, 55 DCR 1259).

For temporary (90 day) amendment of section, see § 2222(a) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2222(a) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 2-218.31.

Legislative history of Law 17-207. — For Law 17-207, see notes following § 2-218.02.

Legislative history of Law 18-111. — Law 18-111, the “Fiscal Year 2010 Budget Support Act of 2009”, was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

§ 2-218.51. Waiver of subcontracting requirements.

(a) The Director may waive the subcontracting requirements of §§ 2-218.46 and 2-218.50 pursuant to this section.

(b) A contracting officer may request that the Director waive the subcontracting requirements for a particular contract by submitting to the Director with the request for waiver a statement of the reasons that justify a waiver.

(c) Repealed.

(d)(1) The Director shall approve a waiver of the subcontracting requirements of §§ 2-218.46 and 2-218.50 requested by a contracting officer if the Director finds that no qualified business enterprises are available to satisfy the subcontracting requirements.

(2) The Director shall waive the subcontracting requirements of §§ 2-218.46 and 2-218.50 if the Director finds that a waiver is necessary to achieve the purposes of this subchapter.

(e) In addition to a waiver granted pursuant to subsection (d) of this section, the Director may grant a waiver or modification of a subcontracting plan requested by the contracting officer if the Director finds that the applicant has made a good faith effort to meet the requirements of §§ 2-218.46 and 2-218.50. In making a good faith determination, the Director shall consider the following factors:

(1) Whether the applicant conducted any pre-solicitation or pre-bid conferences to inform certified business enterprises of contracting and subcontracting opportunities;

(2) Whether the applicant advertised in general circulation, trade association, and ethnic-focus media concerning the contracting and subcontracting opportunities;

(3) Whether the applicant provided written notice to a reasonable number of specific certified business enterprises, in sufficient time to allow certified business enterprises to participate effectively, that their interest in the contract was being solicited;

(4) Whether the applicant followed up initial solicitations of interest by conducting negotiations with certified business enterprises;

(5) Whether rejections by the applicant of certified business enterprises as being unqualified were based on sound reasoning and thorough investigation of their capabilities;

(6) Whether the applicant made efforts to assist interested certified business enterprises in obtaining bonding, lines of credit, or insurance required by the applicant;

(7) Whether the applicant effectively used the services of the Commission in recruiting qualified and responsible certified business enterprises;

(8) Whether bids submitted by certified business enterprises were excessive or noncompetitive based upon a review of prevailing market conditions; and

(9) Any other factors which may be relevant in a particular case.

(10) The contracting officer shall provide written notice of the waiver of the subcontracting requirements of §§ 2-218.46 and 2-218.50 to the applicant prior to the acceptance of bids or proposals and upon approval of the waiver by the Director.

(Oct. 20, 2005, D.C. Law 16-33, § 2351, 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-191, § 5(o)(2), 53 DCR 6794; Sept. 18, 2007, D.C. Law 17-20, § 2062(f), 54 DCR 7052; July 18, 2008, D.C. Law 17-207, § 2(m), 55 DCR 6107.)

Effect of amendments. — D.C. Law 16-191 validated a previously made technical correction.

D.C. Law 17-20 repealed subsec. (c); and, in subsec. (d)(2), substituted “Director” for “Commission”. Prior to repeal, subsec. (c) read as follows: “(c) The Commission may find that a waiver of the subcontracting requirements of §§ 2-218.46 and 2-218.50 for a particular contract are justified in order to achieve the purposes of this subchapter.”

D.C. Law 17-207, in subsec. (e), substituted “certified” for “small, local, or disadvantaged”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(l) of the Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Temporary Amendment Act of 2007 (D.C. Law 17-96, January 29, 2008, law notification 55 DCR 3403).

Emergency legislation. — For temporary (90 day) addition, see § 2351 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2062(f) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 2(l) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Emergency Amendment Act of 2007 (D.C. Act 17-156, October 18, 2007, 54 DCR 10919).

For temporary (90 day) amendment of section, see § 2(l) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-251, January 23, 2008, 55 DCR 1259).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 2-218.02.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 2-215.24.

Legislative history of Law 17-207. — For Law 17-207, see notes following § 2-218.02.

§ 2-218.52. Enforcement mechanism against an agency.

If an agency fails to meet any of the goals set forth in § 2-218.41, the Department may require that a portion of the agency’s contracts and procurements be made part of a set-aside program for small business enterprises.

(Oct. 20, 2005, D.C. Law 16-33, § 2352, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2352 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

§ 2-218.53. Agency reporting requirements.

(a) Each agency shall submit a quarterly report to the Department and to the District of Columbia Auditor within 30 days after the end of each quarter, except for the 4th quarter report. The 4th quarter and annual report shall be submitted together. When submitting a quarterly report, each agency shall list each expenditure as it appears in the general ledger from the expendable budget of the agency during the quarter, which shall include:

- (1) The name of the vendor from which the goods or services were purchased;
- (2) The vendor identification number as it appears in the general ledger;
- (3) A description of the goods or services;
- (4) Whether the vendor was a certified small business enterprise;
- (5) The funding source for the expenditure (local, federal, capital, or other);
- (6) The date of the expenditure;
- (7) The dollar amount of the expenditure; and
- (8) If the vendor is a certified business enterprise, the percentage the amount from paragraph (7) of this subsection is of the agency's total expenditure on all certified business enterprises.

(b) Each agency shall submit to the Department and the District of Columbia Auditor, within 30 days of the issuance of the Comprehensive Annual Financial Report, an annual report listing each expenditure as it appears in the general ledger from the expendable budget of the agency during the fiscal year which shall include:

- (1) The information required to be included in the quarterly reports (with calculations for the fiscal year);
- (2) A description of the activities the agency engaged in, including the programs required by this part, to achieve the goals set forth in § 2-218.41; and
- (3) A description of any changes the agency intends to make during the succeeding fiscal year to the activities it engages in to achieve the goals set forth in § 2-218.41.

(c) The Department shall monitor agency compliance with the reporting requirements of this section.

(d) The District of Columbia Auditor shall review the annual report of each agency to determine whether the planned activities of the agency for the succeeding fiscal year are likely to enable the agency to achieve the goals set forth in § 2-218.41. The District of Columbia Auditor shall make recommendations on activities the agency should engage in to meet or exceed the goals set forth in § 2-218.41. The District of Columbia Auditor's recommendations shall be submitted to the agency, the Council, and the Department.

(e) The Department shall review the annual report of an agency to determine whether the planned activities of the agency for the succeeding fiscal year

are likely to enable the agency to achieve the goals set forth in § 2-218.41. The Department shall make recommendations on activities the agency should engage in to meet or exceed the goals set forth in § 2-218.41. The Department's recommendations shall be submitted to the agency, the Office of District of Columbia Auditor, and the Council within 30 days of the agency's annual report submission.

(Oct. 20, 2005, D.C. Law 16-33, § 2353, 52 DCR 7503; July 18, 2008, D.C. Law 17-207, § 2(n), 55 DCR 6107; Mar. 3, 2010, D.C. Law 18-111, § 2222(b), 57 DCR 181; Apr. 20, 2010, D.C. Law 18-141, § 2(m), 57 DCR 1485; May 27, 2010, D.C. Law 18-159, § 2(d), 57 DCR 3006.)

Effect of amendments. — D.C. Law 17-207, in subsec. (a)(1)(D), substituted "certified" for "local, small, or disadvantaged"; and, in subses. (a)(2)(A), (3)(A), (b)(2)(A), substituted "Certified" for "Local, small, or disadvantaged".

D.C. Law 18-111 rewrote the section.

D.C. Law 18-141 rewrote subses. (a) and (e); and, in subsec. (b), substituted "the Department and the District of Columbia Auditor" for "the Department".

D.C. Law 18-159, in the lead-in language of subsec. (a), inserted "The 4th quarter and annual report shall be submitted together."; and rewrote subsec. (a)(8), which had read as follows: "(8) The total expenditure on certified small business enterprises and the percentage the total expenditure on certified small business enterprises is of the total expenditure."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(m) of the Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Temporary Amendment Act of 2007 (D.C. Law 17-96, January 29, 2008, law notification 55 DCR 3403).

Emergency legislation. — For temporary (90 day) addition, see § 2353 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2(m) of Department of Small and

Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Emergency Amendment Act of 2007 (D.C. Act 17-156, October 18, 2007, 54 DCR 10919).

For temporary (90 day) amendment of section, see § 2(m) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-251, January 23, 2008, 55 DCR 1259).

For temporary (90 day) amendment of section, see § 2222(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2222(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 17-207. — For Law 17-207, see notes following § 2-218.02.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 2-218.50.

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

Legislative history of Law 18-159. — For Law 18-159, see notes following § 2-218.46.

§ 2-218.54. Department reporting requirements.

(a) Within 45 days of its receipt of the annual reports required by § 2-218.53(b), the Department shall submit to the District of Columbia Auditor, through the Compliance Unit established part K of subchapter I of Chapter 3 of Title 1 [§ 1-301.181 et seq.], the following documents and information:

- (1) A copy of the annual reports required by § 2-218.53; and
- (2) A chart listing the following information with respect to each agency for the current fiscal year:
 - (A) The total budget of each agency;
 - (B) The expendable budget of each agency;
 - (C) A description of each funding source, object class, object, or item

that was excluded from the total budget of the agency in the Department's calculation of the expendable budget of the agency;

(D) Each goal of the agency under § 2-218.41 in percentage and dollar terms; and

(E) The actual dollar amount expended with each certified business enterprise.

(b) Within 45 days of its receipt of the annual reports required by § 2-218.50(g), the Department shall submit to the District of Columbia Auditor, through the Compliance Unit established by part K of subchapter I of Chapter 3 of Title 1 [§ 1-301.181 et seq.] a report containing the following information with respect to each government corporation for the current and prior fiscal years:

(1) The expendable budget of the government corporation.

(2) A list of all agencies and government corporations that have not submitted a report for that quarter with a detailed explanation of what actions were taken by the Department to effectuate compliance with the reporting requirement.

(Oct. 20, 2005, D.C. Law 16-33, § 2354, 52 DCR 7503; Apr. 7, 2006, D.C. Law 16-91, § 129, 52 DCR 10637; Mar. 2, 2007, D.C. Law 16-191, § 5(o)(3), 53 DCR 6794; Mar. 2, 2007, D.C. Law 16-192, § 2132(h), 53 DCR 6899; July 18, 2008, D.C. Law 17-207, § 2(o), 55 DCR 6107; Mar. 3, 2010, D.C. Law 18-111, § 2222(c), 57 DCR 181.)

Effect of amendments. — D.C. Law 16-91, in the introductory language, validated a previously made technical correction.

D.C. Law 16-191, in the introductory language, validated a previously made technical correction.

D.C. Law 16-192 designated the existing language as subsec. (a); in subsec. (a)(2), deleted “; and” from the end of subpar. (C), substituted “; and” for a period at the end of subpar. (D), and added subpar. (E); and added subsecs. (b) and (c).

D.C. Law 17-207, rewrote subsec. (a)(2)(E), which had read as follows: “(E) The actual dollar amount expended with each business enterprise.”; and, in subsec. (b)(3)(D), deleted “local, small, or disadvantaged” following “was a”.

D.C. Law 18-111 rewrote the section.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Department of Small and Local Business Development Clarification Temporary Amendment Act of 2005 (D.C. Law 16-49, February 9, 2006, law notification 53 DCR 1457).

For temporary (225 day) amendment of section, see § 2(f) of the Department of Small and Local Business Development Subcontracting Clarification Temporary Amendment Act of 2006 (D.C. Law 16-214, March 6, 2007, law notification 54 DCR 2761).

For temporary (225 day) amendment of sec-

tion, see § 2(n) of the Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Temporary Amendment Act of 2007 (D.C. Law 17-96, January 29, 2008, law notification 55 DCR 3403).

Emergency legislation. — For temporary (90 day) addition, see § 2354 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2(b) of Department of Small and Local Business Development Clarification Emergency Act of 2005 (D.C. Act 16-191, October 28, 2005, 52 DCR 10026).

For temporary (90 day) amendment of section, see § 2(b) of Department of Small and Local Business Development Clarification Congressional Review Emergency Act of 2006 (D.C. Act 16-301, February 27, 2006, 53 DCR 1883).

For temporary (90 day) amendment of section, see § 2132(h) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2132(h) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2(f) of Department of Small and Local Business Development Subcontracting

Clarification Emergency Amendment Act of 2006 (D.C. Act 16-513, October 25, 2006, 53 DCR 9091).

For temporary (90 day) amendment of section, see § 2(f) of Department of Small and Local Business Development Subcontracting Clarification Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-575, December 19, 2006, 54 DCR 24).

For temporary (90 day) amendment of section, see § 2132(h) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 2(n) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Emergency Amendment Act of 2007 (D.C. Act 17-156, October 18, 2007, 54 DCR 10919).

For temporary (90 day) amendment of section, see § 2(n) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-251, January 23, 2008, 55 DCR 1259).

For temporary (90 day) amendment of section, see § 2222(c) of Fiscal Year 2010 Budget

Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2222(c) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 16-91. — Law 16-91, the “Technical Amendments Act of 2005”, was introduced in Council and assigned Bill No. 16-477 which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on November 1, 2005, and November 15, 2005, respectively. Signed by the Mayor on November 30, 2005, it was assigned Act No. 16-212 and transmitted to both Houses of Congress for its review. D.C. Law 16-91 became effective on April 7, 2006.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 2-218.02.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 2-218.31.

Legislative history of Law 17-207. — For Law 17-207, see notes following § 2-218.02.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 2-218.50.

§ 2-218.55. Regional governmental entities.

(a) Except as provided in subsection (b) of this section, a regional governmental entity shall be exempt from the requirements of this subchapter to the extent that the requirements of this subchapter impact on the regional governmental entity's operations within the territory of a member government other than the District.

(b) The District of Columbia Water and Sewer Authority shall be exempt from the requirements of this subchapter to the extent that the requirements of this subchapter are contrary to procurement regulations promulgated pursuant to statutes establishing the District of Columbia Water and Sewer Authority.

(Oct. 20, 2005, D.C. Law 16-33, § 2355, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2355 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Subpart 3—Certification.

§ 2-218.61. Certificate of registration.

(a) No business enterprise shall be permitted to participate in a program established under this part unless the business enterprise:

(1) Has demonstrated its capability to perform and been issued a certificate of registration under the provisions of this subchapter; or

(2) Has been issued a provisional certification under regulations issued pursuant to this subchapter.

(b)(1) An enterprise seeking to be certified as a local, small, or disadvantaged business enterprise, as a resident-owned business, or as a local business enterprise with its principal office located in an enterprise zone shall file with the Department a written application on such form as may be prescribed by the Department.

(2) The application shall include, at a minimum, the following documents and information:

(A) A certification of the correctness of the information provided;

(B) Written evidence that the applicant is:

(i) A bona fide local business enterprise;

(ii) A bona fide disadvantaged business enterprise;

(iii) A bona fide small business enterprise;

(iv) A bona fide local business enterprise located in an enterprise zone;

(v) A bona fide resident-owned business; or

(vi) A bona fide longtime resident business.

(C) Evidence of ability and character;

(D) Evidence of financial position, which may be the applicant's most recent financial statement. For the purposes of this subparagraph, the term "recent" means produced from current data no more than 90 days prior to the application date;

(E) Any other information the Commission or Department may require; and

(F) Federal income taxes, both corporate and personal, as well as District taxes, both corporate and personal.

(c) The Department shall issue the applicant a certificate of registration if:

(1) The information provided in the application or additional filings is satisfactory to the Department;

(2) The business enterprise meets the standards of this subchapter; and

(3) The applicant fulfills other requirements as may be established by the Commission or the Department.

(d) A certificate of registration shall expire 2 years from the date of approval of the application. A business enterprise that is registered with the Department may voluntarily relinquish its registration as a certified business enterprise at any time prior to the expiration of the 2-year term.

(e) The Department shall give first priority in reviewing applications submitted pursuant to subsection (b) of this section to any business enterprises that has received a provisional certification pursuant to § 2-218.62.

(Oct. 20, 2005, D.C. Law 16-33, § 2361, 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-192, § 2132(i), 53 DCR 6899; Sept. 18, 2007, D.C. Law 17-20, § 2062(g), 54 DCR 7052; July 18, 2008, D.C. Law 17-207, § 2(p), 55 DCR 6107; Apr. 20, 2010, D.C. Law 18-141, § 2(n), 57 DCR 1485.)

Effect of amendments. — D.C. Law 16-192 added subsec. (e).

D.C. Law 17-20 rewrote subsec. (b)(1); and, in the introductory language and par. (1) of subsec. (c) and in subsec. (e), substituted “Department” for “Commission”. Prior to amendment, subsec. (b)(1) read as follows: “(1) An enterprise seeking to be certified as a local, small, or disadvantaged business enterprise, as a resident-owned business, as a resident business, or as a local business enterprise with its principal office located in an enterprise zone shall file with the Commission a written application on such form or forms as may be prescribed by the Commission or the Department.”

D.C. Law 17-207, in subsec. (b), inserted “longtime” preceding “resident business”.

D.C. Law 18-141, in subsec. (a)(1), substituted “Has demonstrated its capability to perform and been” for “Has been”; in subsec. (b)(2), deleted “and” from the end of par. (D); substituted “; and” for a period at the end of par. (E), and added par. (F); and, in subsec. (d), added the second sentence.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(o) of the Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Temporary Amendment Act of 2007 (D.C. Law 17-96, January 29, 2008, law notification 55 DCR 3403).

Emergency legislation. — For temporary (90 day) addition, see § 2361 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2132(i) of Fiscal Year 2007 Budget

Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2132(i) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2132(i) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 2062(g) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 2(o) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Emergency Amendment Act of 2007 (D.C. Act 17-156, October 18, 2007, 54 DCR 10919).

For temporary (90 day) amendment of section, see § 2(o) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-251, January 23, 2008, 55 DCR 1259).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 2-218.31.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 2-215.24.

Legislative history of Law 17-207. — For Law 17-207, see notes following § 2-218.02.

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

§ 2-218.62. Provisional certification; self-certification prohibited.

(a) The Department may authorize a business enterprise to participate in a program established under this part without receiving a certificate of registration under § 2-218.61; provided, that such authorization shall be granted only when:

(1) A business enterprise is applying for certification in order to bid on a contract or procurement for which responses are due within the next 45 days;

(2) The business enterprise has submitted a majority of the information required under § 2-218.61; and

(3) The Department reasonably believes that it will certify the business enterprise after the business enterprise has submitted all of the information required under this subchapter or regulations promulgated pursuant to this subchapter.

(b) An authorization granted under this section shall not last for more than 90 days.

(c) The Department shall make authorizations under subsection (a) of this section pursuant to rules promulgated pursuant to this subchapter.

(d) A business enterprise may not self-certify or self-authorize to participate in a program established under § 2-218.43 through 2-218.49.

(Oct. 20, 2005, D.C. Law 16-33, § 2362, 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-192, § 2132(j), 53 DCR 6899; Sept. 18, 2007, D.C. Law 17-20, § 2062(h), 54 DCR 7052.)

Effect of amendments. — D.C. Law 16-192, in subsec. (b), substituted “90” for “120”.

D.C. Law 17-20, in subsec. (a)(3), substituted “it will” for “the Commission will”.

Emergency legislation. — For temporary (90 day) addition, see § 2362 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2132(j) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2132(j) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2132(j) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 2062(h) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 2-218.31.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 2-215.24.

§ 2-218.63. Revocation of registration; challenges to registration; penalties.

(a) After reasonable notice to a person or a business, and a reasonable opportunity to be heard, the Commission may revoke or suspend the certificate of registration of a business enterprise that:

(1) Fraudulently obtained or held, or attempted to obtain or hold, certification;

(1A) Willfully obstructed or impeded, or attempted to obstruct or impede, a city official or employee investigating the qualifications of a business entity that has requested certification;

(1B) In any certified business enterprise matter administered under this subchapter:

(A) Fraudulently obtained, attempted to obtain, or aided another person in fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this subsection;

(B) Willfully falsified, concealed, or covered up a material fact by any scheme or device;

(C) Made a false or fraudulent statement or representation; or

(D) Used a false writing or document that the person knows to contain a false or fraudulent statement or entry.

(1C) Aided another person in performing an act prohibited under paragraphs (1), (1A), or (1B) of this subsection.

(2) Furnished substantially inaccurate or incomplete ownership or financial information;

(3) Failed to report changes that affect its eligibility for certification, including relocation of its principal office or change in ownership or control;

(4) Acted with gross negligence, incompetence, financial irresponsibility, or misconduct in the practice of a trade or profession;

(5) Willfully violated any provision of this subchapter or rules adopted pursuant to this subchapter;

(6) Misrepresented its capability to the Department and failed to perform satisfactorily in the performance of a contract;

(7) No longer qualifies as a local business enterprise; or

(8) Any other cause the Commission determines to be sufficiently serious and compelling to affect responsibility as a District government contractor, including revocation, suspension, or debarment by another governmental entity for any cause listed in rules and regulations.

(a-1)(1) After reasonable notice to a person or business and reasonable opportunity to be heard by the Commission, the Commission shall revoke the certificate of registration of the business enterprise that has willfully failed to cooperate in an audit or investigation conducted by:

(A) The District of Columbia Auditor pursuant to § 1-204.55; or

(B) The Chairman of the Council or the chairperson of the Council committee that conducts an investigation pursuant to § 1-204.13.

(2) The revocation shall be for a period of 2 years, unless the Department receives written notification, from the Commission, that determines within the 2-year period that the affected business has cooperated in the audit or investigation referred to in paragraph (1) of this subsection and has come into full compliance for re-certification.

(b)(1)(A) Any person may file with the Commission through the Department a complaint alleging a violation of this subchapter against an applicant for registration or a business enterprise registered pursuant to this subchapter. The complaint shall be in writing, sworn to by the complainant, and notarized.

(B) The Department shall establish a fraud hotline for reporting violations of this section.

(2) The Commission, without a hearing, may dismiss a complaint which it determines to be frivolous or otherwise without merit. If the Commission dismisses a complaint, the Commission shall prepare a report documenting the following:

(A) A statement detailing the complaint, including the name, address, and telephone number of the person filing the complaint;

(B) The name of the applicant for registration or business enterprise alleged to be in violation of this subchapter;

(C) The facts and legal authority considered in rendering the determination; and

(D) Any other information considered in rendering the determination.

(3) The Commission shall maintain a record listing all complaints, which shall contain the following information:

(A) The name of the applicant or business enterprise alleged to be in violation of this subchapter;

(B) The date the complaint was made to the Department; and

(C) A description of the complaint.

(4) If the Commission does not determine that a complaint is frivolous or otherwise without merit, it shall hold a hearing on the complaint within 3 months of the filing of the complaint. The Commission shall determine the time and place of the hearing. The Commission shall cause to be issued and served on the person or business enterprise alleged to have committed the violation, hereafter called the “respondent”, a written notice of the hearing together with a copy of the complaint at least 30 days prior to the scheduled hearing. Notice shall be served by registered or certified mail, return receipt requested, or by personal service. At the hearing, the respondent shall have the right to appear personally or by a representative and to cross-examine witnesses and to present evidence and witnesses.

(5) If, after the conclusion of the hearing, the Commission determines that the respondent has violated the provisions of this subchapter or regulations issued pursuant to this subchapter, the Commission shall issue, and cause to be served on the respondent, a decision and order, accompanied by findings of fact and conclusions of law, revoking or suspending the respondent’s registration, or taking any other action it considers appropriate.

(6) The Commission shall have the authority to issue subpoenas requiring the attendance of witnesses and to compel the production of records, papers, and other documents.

(c) In addition to the procedures and penalties provided in subsection (b) of this section, the Attorney General for the District of Columbia may bring a civil action in the Superior Court of the District of Columbia against a business enterprise and the directors, officers, or principals of a business enterprise that is reasonably believed to have obtained certification by fraud or deceit or to have willfully furnished substantially inaccurate or incomplete ownership information to the Department or to the Commission. A business enterprise or individual found guilty under this subsection shall be subject to a civil penalty of not more than \$100,000.

(d) The Commission may at any time reissue a certificate of registration to any firm or joint venture whose certificate has been revoked; provided, that a majority of at least 4 members of the Commission vote in favor of reissuance. The Commission may consider whether the firm or joint venture should be required to submit satisfactory proof that conditions within the company that led to the violation have been corrected.

(d-1) Repealed.

(e) Any contract awarded to a business enterprise based on the use of a provisional certification issued pursuant to § 2-218.62 shall be voidable by the District if the final disposition of an application for a certificate of registration is denied pursuant to § 2-218.61.

(f) The Department may downgrade the certification of registration of a business enterprise that ceases to meet the requirements of a particular category of certification; provided, that this subsection shall not apply where a business enterprise ceases to qualify as a local business enterprise.

(Oct. 20, 2005, D.C. Law 16-33, § 2363, 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-192, § 2132(k), 53 DCR 6899; Sept. 18, 2007, D.C. Law 17-20, § 2062(i), 54

DCR 7052; Apr. 20, 2010, D.C. Law 18-141, § 2(o), 57 DCR 1485; May 27, 2010, D.C. Law 18-159, § 2(e), 57)

Effect of amendments. — D.C. Law 16-192 added subsec. (e).

D.C. Law 17-20, in subsec. (c), substituted “to the Department or to the Commission” for “to the Commission”; and, in subsec. (e), deleted “by the commission” following “denied”.

D.C. Law 18-141 rewrote the section.

D.C. Law 18-159, in subsec. (a-1)(1), substituted “business enterprise” for “person or business enterprise”; in subsec. (b)(1)(A), substituted “the Commission through the Department” for “the Department”; in subsec. (b)(2), substituted “Commission” for “Department” and “Commission” for “Director”; in subsec. (b)(3), substituted “Commission” for “Director”; added subsecs. (b)(4), (5), and (6); and repealed subsec. (d-1), which had read as follows: “(d-1) The Department may at any time reissue a certificate of registration to any firm or joint venture whose certificate has been revoked. The Department may consider whether the firm or joint venture should be required to submit satisfactory proof that conditions within the company that led to the violation have been corrected.”

Emergency legislation. — For temporary (90 day) addition, see § 2363 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2132(k) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2132(k) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2132(k) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 2062(i) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 2-218.31.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 2-215.24.

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

Legislative history of Law 18-159. — For Law 18-159, see notes following § 2-218.46.

§ 2-218.64. Identification of certified business enterprises in bids or proposals; false statements on certification; penalties.

(a)(1) Except as otherwise provided by law, a contractor or business enterprise may not:

(A) Identify a certified business enterprise in a bid or proposal unless it:

(i) Has obtained authorization from the certified business enterprise to identify the certified business enterprise in its bid or proposal;

(ii) Has notified the certified business enterprise before execution of the contract of its inclusion in the bid or proposal; and

(iii) Uses the certified business enterprise in the performance of the contract; or

(B) Pay the certified business enterprise solely for the use of its name in the bid or proposal.

(2) A person who violates any provision of this subsection is guilty of a felony and, upon conviction, subject to a fine not to exceed \$15,000, imprisonment not to exceed 5 years, or both.

(b)(1) A person may not make false statements about whether an entity has business enterprise certification.

(2) A person who violates this subsection is guilty of a misdemeanor and,

upon conviction, subject to a fine not to exceed \$5,000, imprisonment not to exceed one year, or both.

(Oct. 20, 2005, D.C. Law 16-33, § 2364, as added Apr. 20, 2010, D.C. Law 18-141, § 2(p), 57 DCR 1485; May 27, 2010, D.C. Law 18-159, § 2(f), 57 DCR 3006.)

Effect of amendments. — D.C. Law 18-159 rewrote subsec. (a)(1)(A)(i); and, in subsec. (a)(2), substituted “imprisonment not to exceed 5 years,” for “imprisonment.” Prior to amendment, subsec. (a)(1)(A)(i) read as follows: “(i) Has requested, received, or otherwise obtained authorization from the certified business enter-

prise to identify the certified business enterprise in its bid or proposal;”.

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

Legislative history of Law 18-159. — For Law 18-159, see notes following § 2-218.46.

§ 2-218.65. Certification audits.

The District of Columbia Auditor may conduct random audits of certification files to determine whether the Department followed the requirements set forth in § 2-218.61. The District of Columbia Auditor shall submit findings and recommendations to the Department and the Council.

(Oct. 20, 2005, D.C. Law 16-33, § 2365, as added Apr. 20, 2010, D.C. Law 18-141, § 2(p), 57 DCR 1485.)

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

Subpart 3A—Stabilization and Job Creation Strategy.

§ 2-218.66. Services to certified business enterprise.

(a) The Department shall provide the following services to certified business enterprises:

- (1) Specialized programs to assist certified business enterprises in securing capital and repairing damaged credit;
- (2) Informational seminars on securing credit and loans; and
- (3) Access to non-traditional financing sources, as well as traditional lending sources.

(b) The Department shall:

- (1) Develop a catalog of on-line survival and growth tools and resources that certified business enterprises can access through the Internet or other organizations;
- (2) Enter into a memorandum of understanding with a third-party vendor to provide expert consulting and education to assist certified businesses enterprises at risk of failure, including certified business enterprises that are considering filing for bankruptcy;
- (3) Develop a formal listing of financing options for business enterprises;
- (4) Deliver services that assist workers who become unemployed due to economic fluctuations to begin new businesses; and
- (5) Enter into a memorandum of understanding with a third-party vendor

to provide one-on-one counseling with potential borrowers to improve financial presentations to lenders.

(Oct. 20, 2005, D.C. Law 16-33, § 2366, as added May 27, 2010, D.C. Law 18-159, § 2(g), 57 DCR 3006.)

Legislative history of Law 18-159. — Law 18-159, the “Small Business Stabilization and Job Creation Strategy Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-457, which was referred to the Committee on Economic Development. The bill

was adopted on first and second readings on February 2, 2010, and March 2, 2010, respectively. Signed by the Mayor on March 25, 2010, it was assigned Act No. 18-350 and transmitted to both Houses of Congress for its review. D.C. Law 18-159 became effective on May 27, 2010.

§ 2-218.67. Establishment of the Volunteer Corp of Executives and Entrepreneurs.

(a) There is established the Volunteer Corp of Executives and Entrepreneurs to provide mentoring, education, consulting, and networking services to certified business enterprises within the Department. Notwithstanding any other provision of law, the Volunteer Corp of Executives and Entrepreneurs may solicit contributions from the private sector to be used to carry out its functions under this section.

(b)(1) The Volunteer Corp of Executives and Entrepreneurs shall consist of individuals with at least 10 years of experience in the industry.

(2) Individuals serving within the Volunteer Corp of Executives and Entrepreneurs shall serve without compensation for their services.

(c) The Director shall:

(1) Ensure that the Volunteer Corp of Executives and Entrepreneurs carries out a plan to increase the proportion of persons within the certified business enterprises who are from socially and economically disadvantaged backgrounds;

(2) Ensure that the Volunteer Corp of Executives and Entrepreneurs establishes benchmarks for use in evaluating the performance of its activities and the performance of the individuals serving in the Volunteer Corp of Executives and Entrepreneurs, including the following:

(A) The demographic characteristics and the geographic characteristics of persons within the certified business enterprises assisted by the Volunteer Corp of Executives and Entrepreneurs;

(B) The hours spent mentoring by individuals within the Volunteer Corp of Executives and Entrepreneurs; and

(C) The performance evaluations of the persons or the certified business enterprises assisted by the Volunteer Corp of Executives and Entrepreneurs;

(3) Ensure that the Volunteer Corp of Executives and Entrepreneurs provides one-on-one advice to certified business enterprises; and

(4) Implement a networking program through the Volunteer Corp of Executives and Entrepreneurs, which provides certified business enterprises with the opportunity to make business contacts in their industry.

(d) The Council shall receive an annual report on the implementation of this section.

(Oct. 20, 2005, D.C. Law 16-33, § 2367, as added May 27, 2010, D.C. Law 18-159, § 2(g), 57 DCR 3006.)

Legislative history of Law 18-159. — For Law 18-159, see notes following § 2-218.66.

§ 2-218.68. Management and direction.

(a)(1) Beginning with fiscal year 2011, the Department shall develop an annual job creation plan (“Plan”) for using District small business development resources as a catalyst for job creation and submit the Plan to the Council within 45 days of October 1st.

(2) The Plan shall include the Department’s strategy for drawing on existing programs and other available resources. To evaluate the success of the Department’s actions regarding these efforts, the Director shall identify, in consultation with the appropriate personnel from small business development programs, the performance measures and criteria, to include job creation, retention, and retraining goals.

(b)(1) The Department, pursuant to subchapter I of Chapter 5 of this title [§ 2-501 et seq.], shall issue rules to develop and implement a consistent data collection process to cover all small business development programs in the District.

(2) The data collection process shall include data relating to:

- (A) Job creation;
- (B) Performance; and
- (C) Any other data determined appropriate by the Director.

(c) Beginning with fiscal year 2011, the Director, in consultation with other departments and agencies, shall submit, within 45 days of October 1, an annual report to the Council on opportunities to foster coordination, limit duplication, and improve program delivery for small business development programs.

(d)(1) The Director shall designate a staff member as a community specialist who is responsible for working with local small development service providers to increase coordination with federal resources.

(2) The Director shall develop benchmarks for measuring the performance of the community specialist under this subsection.

(Oct. 20, 2005, D.C. Law 16-33, § 2368, as added May 27, 2010, D.C. Law 18-159, § 2(g), 57 DCR 3006.)

Legislative history of Law 18-159. — For Law 18-159, see notes following § 2-218.66.

§ 2-218.69. Procurement training and assistance.

The Department shall:

- (1) Identify contracts that are suitable for certified business enterprises;
- (2) Assist certified business enterprises in identifying and preparing for business opportunities made available under the American Recovery and Reinvestment Act of 2009, approved February 17, 2009 (Pub. L. No. 111-5; 123

Stat. 115), through informational presentations and the dissemination of information; and

(3) Provide technical assistance regarding the District and federal procurement processes, including assisting certified business enterprises to comply with local and federal regulations and bonding requirements.

(Oct. 20, 2005, D.C. Law 16-33, § 2369, as added May 27, 2010, D.C. Law 18-159, § 2(g), 57 DCR 3006.)

Legislative history of Law 18-159. — For Law 18-159, see notes following § 2-218.66.

Subpart 4—Triennial review and rulemaking.

§ 2-218.71. Triennial review of program and subchapter.

(a) Every 3 years following October 20, 2005, the Department shall submit to the Council, the Mayor, and the Commission the results of an independent evaluation of the certified business enterprise programs. This evaluation shall compare the costs of contracts awarded pursuant to this subchapter to the cost of contracts awarded without use of the set-asides and bid preferences authorized by this subchapter. This evaluation shall also compare economic outcomes such as revenue, tax payments, and employment of District residents for certified business enterprises certified pursuant to Part D of this subchapter to economic outcomes for similar firms that are not certified pursuant to Part D of this subchapter.

(b) The Department and the Commission shall review the findings in the triennial report and the goals, intents, and purposes of this subchapter. The Department shall, and the Commission may, transmit to the Council and the Mayor a report setting forth any recommended amendments to this subchapter.

(Oct. 20, 2005, D.C. Law 16-33, § 2371, 52 DCR 7503; Sept. 18, 2007, D.C. Law 17-20, § 2062(j), 54 DCR 7052; July 18, 2008, D.C. Law 17-207, § 2(q), 55 DCR 6107.)

Effect of amendments. — D.C. Law 17-20, in subsec. (a), substituted “pursuant to Part D of this subchapter” for “by the Commission”.

D.C. Law 17-207, in subsec. (a), substituted “certified” for “small, local, and disadvantaged”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(p) of the Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Temporary Amendment Act of 2007 (D.C. Law 17-96, January 29, 2008, law notification 55 DCR 3403).

Emergency legislation. — For temporary (90 day) addition, see § 2371 of Fiscal Year 2006 Budget Support Emergency Act of 2005

(D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2062(j) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 2(p) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Emergency Amendment Act of 2007 (D.C. Act 17-156, October 18, 2007, 54 DCR 10919).

For temporary (90 day) amendment of section, see § 2(p) of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-

making Authority Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-251, January 23, 2008, 55 DCR 1259).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 2-215.24.

Legislative history of Law 17-207. — For Law 17-207, see notes following § 2-218.02.

§ 2-218.72. Rulemaking authority.

The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement this subchapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(Oct. 20, 2005, D.C. Law 16-33, § 2372, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 2372 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-218.01.

Delegation of Authority. — Delegation of Authority—Department of Small and Local Business Development, see Mayor's Order 2005-136, September 27, 2005 (53 DCR 154).

Delegation of Authority pursuant to section 2372 of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, see Mayor's Order 2009-58, April 15, 2009 (56 DCR 6797).

Resolutions. — Resolution 18-267, the "Local, Small, and Disadvantaged Business Enterprise Contracting Regulations Approval Resolution of 2009", was approved effective October 6, 2009.

Subpart 5—Financial Assistance.

§ 2-218.75. Small Business Micro Loan Fund.

(a) For the purposes of this section, the term:

(1) "Eligible recipient" means businesses certified as small business enterprises pursuant to § 2-218.22 or disadvantaged business enterprises pursuant to § 2-218.23.

(2) "Fund" means the Small Business Micro Loan Fund.

(b) There is established as a nonlapsing fund the Small Business Micro Loan Fund, which shall be used for the following purposes:

(1) To grant the local funds necessary to obtain federal matching funds to establish a procurement technical assistance program in the Department;

(2) To make a one-time grant in an amount of \$50,000 to provide operating support to a newly formed business association in Ward 3; and

(3) To provide financial assistance, including grants, loans, and loan guarantees, to eligible recipients.

(c)(1) All funds deposited into the Fund shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(2) Any penalties assessed by the Department pursuant to § 2-218.48 and any civil penalties imposed pursuant to § 2-218.63(c) and any fees collected

pursuant to § 2-218.49a(a-1) shall be collected by the Department and deposited into the Fund.

(d) Preference for financial assistance shall be given to:

(1) Eligible recipients that are also certified as resident-owned businesses pursuant to § 2-218.35; or

(2) Eligible recipients that serve, or whose principal office is located in:

(A) A DC Main Street corridor;

(B) A Neighborhood Investment Program Target Area; or

(C) Another area identified by the Mayor for economic development or commercial revitalization.

(e) Within 90 days of September 18, 2007, the Mayor shall issue rules to implement the provisions of this section. The Mayor shall submit the proposed rules to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within the 45-day review period, the proposed rules shall be deemed approved.

(Oct. 20, 2005, D.C. Law 16-33, § 2375, as added Sept. 18, 2007, D.C. Law 17-20, § 2062(e), 54 DCR 7052; July 18, 2008, D.C. Law 17-207, § 3, 55 DCR 6107; Aug. 16, 2008, D.C. Law 17-219, § 2022, 55 DCR 7598; Mar. 25, 2009, D.C. Law 17-353, § 216, 56 DCR 1117; Mar. 3, 2010, D.C. Law 18-111, § 2231, 57 DCR 181; Apr. 8, 2011, D.C. Law 18-357, § 2(b), 58 DCR 763.)

Effect of amendments. — D.C. Law 17-207, in subsec. (c)(2), made an amendment that resulted in no change in text; redesignated the former second subsection designated as (c) as subsec. (d); and redesignated former subsec. (d) as subsec. (e).

D.C. Law 17-219 rewrote subsec. (b), which had read as follows: “(b) There is established as a nonlapsing fund the Small Business Micro Loan Fund, which shall be used solely to provide financial assistance, including loans and loan guarantees, to eligible recipients.”

D.C. Law 17-353 validated previously made technical corrections in subsecs. (c)(2), (d), and (e).

D.C. Law 18-111, in subsec. (a)(1), substituted “or disadvantaged” for “and disadvantaged”; and rewrote subsec. (b)(2), which had read as follows: “(2) To make a one-time grant in an amount of \$120,000 to be divided equally among the D.C. Main Streets Programs that are in good standing and have letters of agreement with the Department of Small and Local Business Development that expire by September 30, 2008 for expenditures related to personnel, accounting, and auditor services; and to make a one-time grant in an amount of \$10,000 to the Latino Economic Development Corporation for the printing of the Think Local First print directory that supports local businesses in the District; and”.

D.C. Law 18-357, in subsec. (b), substituted “used” for “used solely”; and, in subsec. (c)(2),

substituted “and any fees collected pursuant to § 2-218.49a(a-1) shall be collected by the Department and deposited into the Fund” for “shall be collected by the Department and deposited into the Fund”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of the Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Temporary Amendment Act of 2007 (D.C. Law 17-96, January 29, 2008, law notification 55 DCR 3403).

Emergency legislation. — For temporary (90 day) addition, see § 2062(e) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 3 of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Emergency Amendment Act of 2007 (D.C. Act 17-156, October 18, 2007, 54 DCR 10919).

For temporary (90 day) amendment of section, see § 3 of Department of Small and Local Business Development Subcontracting Clarification, Benefit Expansion, and Grant-making Authority Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-251, January 23, 2008, 55 DCR 1259).

For temporary (90 day) amendment of section, see § 2 of Small Business Micro Loan

Fund Emergency Amendment Act of 2009 (D.C. Act 18-106, June 18, 2009, 56 DCR 4927).

For temporary (90 day) amendment of section, see § 2231 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2231 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) addition of section, see § 2242 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 2(b) of Alternative Equity Payment Allocation Emergency Amendment Act of 2010 (D.C. Act 18-589, October 20, 2010, 57 DCR 10143).

For temporary (90 day) amendment of section, see § 2(b) of Alternative Equity Payment Allocation Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-1, February 2, 2011, 58 DCR 1236).

Legislative history of Law 17-20. — Law 17-20, the “Fiscal Year 2008 Budget Support Act of 2007”, was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed

by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Legislative history of Law 17-207. — For Law 17-207, see notes following § 2-218.02.

Legislative history of Law 17-219. — Law 17-219, the “Fiscal Year 2009 Budget Support Act of 2008”, was introduced in Council and assigned Bill No. 17-678, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 13, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 26, 2008, it was assigned Act No. 17-419 and transmitted to both Houses of Congress for its review. D.C. Law 17-219 became effective on August 16, 2008.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 2-218.42.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 2-218.50.

Legislative history of Law 18-357. — For history of Law 18-357 see notes under § 2-218.49a.

Short title. — Short title: Section 2021 of D.C. Law 17-219 provided that subtitle I of title II of the act may be cited as the “Small Business Micro Loan Fund Amendment Act of 2008”.

Short title: Section 2230 of D.C. Law 18-111 provided that subtitle X of title II of the act may be cited as the “Small Business Micro Fund Amendment Act of 2009”.

§ 2-218.76. Commercial Revitalization Assistance Fund.

(a)(1) There is established as a nonlapsing fund the Commercial Revitalization Assistance Fund (“Fund”). All funds deposited into the Fund and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(2) The Fund shall be administered by the Department of Small and Local Business Development and shall be separate and independent from any other commercial revitalization programs provided by the District.

(b) The Fund shall be used solely to provide commercial revitalization funding to Main Streets programs and other commercial revitalization services.

(Oct. 20, 2005, D.C. Law 16-33, § 2376, as added Sept. 24, 2010, D.C. Law 18-223, § 2242, 57 DCR 6242.)

Legislative history of Law 18-223. — Law 18-223, the “Fiscal Year 2011 Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C.

Law 18-223 became effective on September 24, 2010.

Short title. — Short title: Section 2241 of D.C. Law 18-223 provided that subtitle U of

title II of the act may be cited as the “Commercial Revitalization Segregated Fund Amendment Act of 2010”.

PART E.

REPEALERS.

§ 2-218.81. [Reserved].

§ 2-218.82. Repealers.

(a) Sections 2-215.03, 2-215.04, and 2-215.11 are repealed.

(b) Subchapter IX of Chapter 2 of Title 2 [§ 2-217.01 et seq.] is repealed.

(c) An order, rule, or regulation in effect under a law repealed by this section shall remain in effect under the corresponding provision enacted by this subtitle [Subtitle N of Title II of D.C. Law 16-33, §§ 2301 to 2391], until repealed, amended, or superseded.

(Oct. 20, 2005, D.C. Law 16-33, § 2382, 52 DCR 7503.)

Cross references. — License fee exemption, supermarket developments, see § 47-2827.

Property exempt from taxation, supermarket developments, see § 47-1002.

Washington convention center authority, general powers, see § 10-1202.03.

Subchapter X. First Source Employment.

PART A.

GENERAL PROVISIONS.

§ 2-219.01. Definitions.

For the purposes of this part, the term:

(1) “Beneficiary” means:

(A) The signatory to a contract executed by the Mayor which involves any District of Columbia government funds, or funds which, in accordance with a federal grant or otherwise, the District government administers and which details the number and description of all jobs created by a government-assisted project or contract for which the beneficiary is required to use the First Source Register;

(B) A recipient of a District government economic development action including contracts, grants, loans, tax abatements, land transfers for redevelopment, or tax increment financing that results in a financial benefit of \$300,000 or more from an agency, commission, instrumentality, or other entity of the District government, including a financial or banking institution which serves as the repository for \$1 million or more of District of Columbia funds.

(C) A retail or commercial tenant that is a direct recipient of a District government economic development action, including contracts, grants, loans, tax abatements, land transfers for public redevelopment, or tax increment financing in excess of \$300,000.

(2) "Employment agreement" means the contract referred to in paragraph (1) of this section.

(3) "All jobs" means any union and non-union managerial, nonmanagerial professional, nonprofessional, technical or nontechnical position including: clerical and sales occupations, service occupations, processing occupations, machine trade occupations, bench work occupations, structural work occupations, agricultural, fishery, forestry, and related occupations, and any other occupations as the Department of Employment Services may identify in the Dictionary of Occupational Titles, United States Department of Labor.

(4) "First Source Register" means the Department of Employment Services Automated Applicant Files, which consists of the names of unemployed District residents registered with the Department of Employment Services.

(5) "Government-assisted project or contract" means any construction or non-construction project or contract receiving funds or resources from the District of Columbia, or funds or resources which, in accordance with a federal grant or otherwise, the District of Columbia government administers, including contracts, grants, loans, tax abatements or exemptions, land transfers, land disposition and development agreements, tax increment financing, or any combination thereof, that is valued at \$300,000 or more.

(6) "Unemployed District resident" means:

(A) Any unemployed resident of the District of Columbia who does not receive unemployment compensation benefits pursuant to Chapter 1 of Title 51, and who lives within the boundaries of the advisory neighborhood commission in which the government-assisted project or contract is located;

(B) Any unemployed resident of the District of Columbia who does not receive unemployment compensation benefits pursuant to Chapter 1 of Title 51; or

(C) Any other unemployed resident of the District of Columbia.

(7) "Hard to employ" means a District resident who is confirmed by a District of Columbia government agency as:

(A) An ex-offender who has been released from prison within the last 10 years;

(B) A participant of the Temporary Assistance for Needy Families program;

(C) A participant of the Supplemental Nutrition Assistance Program;

(D) Living with a permanent disability verified by the Social Security Administration or District vocational rehabilitation program;

(E) Unemployed for 6 months or more in the last 12-month period;

(F) Homeless;

(G) A participant or graduate of the Transitional Employment Program established by § 32-1331; or

(H) An individual who qualified for inclusion in the Work Opportunity Tax Credit Program as certified by the Department of Employment Services.

(8) “Direct labor costs” means all costs, including wages and benefits, associated with the hiring and employment of personnel assigned to a process in which payroll expenses are traced to the units of output and are included in the cost of goods sold.

(9) “Indirect labor costs” means all costs, including wages and benefits, that are part of operating expenses and are associated with the hiring and employment of personnel assigned to tasks other than producing products.

(10) “Workforce Act” means the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 [D.C. Law 19-84].

(June 29, 1984, D.C. Law 5-93, § 2, 31 DCR 2545; Mar. 15, 1985, D.C. Law 5-175, § 2, 32 DCR 746; Mar. 17, 1993, D.C. Law 9-210, § 2(a), 40 DCR 19; June 8, 2006, D.C. Law 16-118, § 302(a), 53 DCR 2602; Mar. 25, 2009, D.C. Law 17-353, § 113, 56 DCR 1117; Feb. 24, 2012, D.C. Law 19-84, § 2(a), 58 DCR 11170.)

Cross references. — Economic development zone incentives, businesses qualifying for tax incentives, see § 6-1504.

Section references. — This section is referred to in § 2-219.03.

Prior Codifications. — 1981 Ed., § 1-1161.

Effect of amendments. — D.C. Law 16-118 rewrote par. (1), which had read as follows: “(1) ‘Beneficiary’ means the signator to a contract executed by the Mayor which involves any District of Columbia government funds, or funds which, in accordance with a federal grant or otherwise, the District of Columbia government administers, or the applicant for any street or alley closing pursuant to Chapter 2 of Title 9, and which details the number and description of all jobs created by a government-assisted project for which the beneficiary is required to use the First Source Register.”

D.C. Law 17-353 validated a previously made technical correction in the lead-in language.

D.C. Law 19-84 rewrote pars. (1) and (5); in par. (3), substituted “union and non-union managerial, nonmanagerial” for “managerial, nonmanagerial,”; in par. (6), substituted “government-assisted project or contract” for “government-assisted project”; and added pars. (7) to (10).

Temporary Addition of Section. — Section 2 of D.C. Law 19-55 added a section to read as follows:

“Sec. 2. Establishment of Workforce Intermediary Task Force.

“(a)(1) By November 1, 2011, the Mayor shall establish a Workforce Intermediary Task Force (“Task Force”) to review best practices for workforce intermediary programs.

“(2) The Task Force shall review similar programs implemented by the governments of Boston, Minneapolis, San Francisco, and any other cities that have implemented similar programs.

“(3) By January 15, 2012, the Task Force shall recommend to the Mayor and the Council a Workforce Intermediary Program (“Program”) for the District. The recommendation shall include a review of:

“(A) The industries, in addition to the construction industry, that should be a focal point of the Program because they are frequently required to enter into first source agreements;

“(B) What would be a reasonable operating budget for the Program, including a cap on administrative costs;

“(C) What would be a reasonable funding mechanism for the Program;

“(D) How the Program would collaborate with multiple District government agencies and community-based organizations to serve job-ready residents as well as residents needing job-training services or adult basic education services;

“(E) The specific performance metrics that should be used to assess the performance of the Program’s process and outcomes;

“(F) The baseline data that would be needed to isolate, to the fullest extent possible, the effects of the Program;

“(G) The type of governance structure that would work best for establishing the Program and for the ongoing operations of the Program; and

“(H) What programmatic and statutory recommendations would be necessary regarding how the Program will interact with the District’s First Source Register program.

“(b)(1) The recommendations shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. Upon receipt of the recommendations, the Council shall hold a public roundtable or hearing. If the Council does not approve or disapprove the recommendations, in whole or in part, by reso-

lution within the 45-day review period, the recommendations shall be deemed disapproved.

“(2) If the recommendations are disapproved by the Council, the Council’s Committee on Housing and Workforce Development shall transmit a report to the Task Force citing the Council’s concerns and the Task Force shall have 30 days to review the report and re-submit its new recommendations to the Mayor and the Council for approval pursuant to paragraph (1) of this subsection.

“(c) The Task Force shall consist of the following 17 members:

“(1) The Mayor, or his designee;

“(2) The Chairman of the Council, or his designee;

“(3) The Chairman of the Council’s Committee on Housing and Workforce Development, or his designee;

“(4) The Director of the Department of Employment Services;

“(5) The Deputy Mayor for Planning and Economic Development, or his designee;

“(6) The Executive Director of the Workforce Investment Council;

“(7) Two members of the District business community who represent industries that are frequently subject to first source agreements, appointed by the Mayor;

“(8) Two members of the District business community who represent industries that are frequently subject to first source agreements, appointed by the Chairman of the Council;

“(9) A representative of a District job training or education provider, appointed by the Mayor;

“(10) A representative of a District job training or education provider, appointed by the Chairman of the Council;

“(11) Two representatives of organized labor, appointed by the Mayor;

“(12) A representative of organized labor, appointed by the Chairman of the Council;

“(13) A representative of the District philanthropic community or an organization focused on workforce development research, appointed by the Mayor; and

“(14) A representative of the District philanthropic community or an organization focused on workforce development research, appointed by the Chairman of the Council.

“(d) The Mayor and the Chairman of the Council shall serve as co-chairs of the Task Force.

“(e) The director of each District agency and instrumentality that engages in capital construction shall advise and assist the Task Force.”

Section 4(b) of D.C. Law 19-55 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition of section, see § 2 of Work-

force Intermediary Task Force Establishment Emergency Act of 2011 (D.C. Act 19-131, August 2, 2011, 58 DCR 6789).

For temporary (90 day) addition of section, see § 2 of Workforce Intermediary Task Force Establishment Second Emergency Act of 2011 (D.C. Act 19-167, October 11, 2011, 58 DCR 8900).

Legislative history of Law 5-93. — Law 5-93, the “First Source Employment Agreement Act of 1984,” was introduced in Council and assigned Bill No. 5-341, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on April 10, 1984 and April 30, 1984, respectively. Signed by the Mayor on May 9, 1984, it was assigned Act No. 5-134 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-175. — Law 5-175 was introduced in Council and assigned Bill No. 5-542, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on December 4, 1984 and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-240 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-210. — Law 9-210, the “First Source Employment Agreement Act of 1984 Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-75, which was referred to the Committee on Labor. The Bill was adopted on first and second readings on November 4, 1992, and December 1, 1992, respectively. Signed by the Mayor on December 21, 1992, it was assigned Act No. 9-339 and transmitted to both Houses of Congress for its review. D.C. Law 9-210 became effective on March 17, 1993.

Legislative history of Law 16-118. — For Law 16-118, see notes following § 2-220.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 2-218.42.

Legislative history of Law 19-84. — Law 19-84, the “Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011,” was introduced in Council and assigned Bill No. 19-50, which was referred to the Committee on Housing and Workforce Development. The Bill was adopted on first and second readings on November 1, 2011, and December 6, 2011, respectively. Signed by the Mayor on December 21, 2011, it was assigned Act No. 19-244 and transmitted to both Houses of Congress for its review. D.C. Law 19-84 became effective on February

Delegation of Authority. — Delegation of Authority pursuant to D.C. Law 16-118, the “Way to Work Amendment Act of 2006,” see Mayor’s Order 2006-122, September 27, 2006 (53 DCR 9313).

Delegation of Additional Functions relating to First Source Employment Compliance to the Deputy Mayor for Planning and Economic De-

velopment, see Mayor's Order 2011-47, February 23, 2011 (58 DCR 1665).

§ 2-219.02. First Source Register created.

(a) The Mayor shall maintain a First Source Register. The First Source Register is the Department of Employment Services Automated Applicant File, which consists of the names of unemployed District residents registered with the Department of Employment Services.

(b) In compiling and maintaining the First Source Register the Mayor shall contact community organizations, advisory neighborhood commissions, civic and citizen associations, and project area committees for names of unemployed District residents.

(June 29, 1984, D.C. Law 5-93, § 3, 31 DCR 2545; Mar. 17, 1993, D.C. Law 9-210, § 2(b), 40 DCR 19.)

Prior Codifications. — 1981 Ed., § 1-1162.

Legislative history of Law 5-93. — For legislative history of D.C. Law 5-93, see Historical and Statutory Notes following § 2-219.01.

Legislative history of Law 9-210. — For legislative history of D.C. Law 9-210, see His-

torical and Statutory Notes following § 2-219.01.

Delegation of Authority. — Delegation of authority pursuant to Law 5-93, see Mayor's Order 86-66, April 22, 1986.

§ 2-219.03. Employment agreements required.

(a) The Mayor shall include for every government-assisted project or contract a requirement that the beneficiary enter into an employment agreement with the District of Columbia government which states that:

(1) The first source for finding employees to fill all jobs created by the government-assisted project or contract will be the First Source Register; and

(2) The first source for finding employees to fill any vacancy occurring in all jobs covered by an employment agreement will be the First Source Register.

(b) In selecting unemployed District residents from the First Source Register for interviews for all jobs covered by each employment agreement, the Mayor shall:

(1) Give first preference to unemployed District residents pursuant to § 2-219.01(6)(A); and

(2) Give second preference to unemployed District residents pursuant to § 2-219.01(6)(B).

(c) The Mayor shall transmit each employment agreement to the Department of Employment Services no less than 7 calendar days in advance of the project or contract start date, whichever is later, and no work associated with the relevant government assistance can begin on a project or contract until the employment agreement has been accepted by the Department of Employment Services.

(d) Repealed.

(e)(1)(A) The Mayor shall include in each government-assisted project or contract that receives government assistance totaling between \$300,000 and \$5,000,000, a provision that at least 51% of the new employees hired to work

on the project or contract shall be District residents. Collective bargaining agreements shall not be the basis for a waiver from this requirement.

(B) Prior to the employment agreement being accepted by the Department of Employment Services, each beneficiary covered by this paragraph shall choose whether the 51% of the new employees hired shall be:

(i) Cumulative of all new hires, including those made by all subcontractors at any tier who work on the project or contract; or

(ii) Met by each beneficiary covered by this paragraph and each individual subcontractor at any tier who works on the project or contract.

(C) Each beneficiary covered by this paragraph shall submit to the Department of Employment Services each month following the start of the project or contract a hiring compliance report for the project or contract that includes the:

(i) Number of employees who worked on the project or contract;

(ii) Number of current employees transferred;

(iii) Number of new job openings created;

(iv) Number of job openings created by employee attrition;

(v) Number of job openings listed with the Department of Employment Services;

(vi) Total monthly direct and indirect labor costs associated with the project or contract;

(vii) Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and

(viii) Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including each employee's:

(I) Name;

(II) Social security number;

(III) Job title;

(IV) Hire date;

(V) Residence; and

(VI) Referral source for all new hires.

(D)(i) Government-assisted construction projects or contracts covered by this paragraph shall be subject to the hiring and reporting requirements set forth in this paragraph until construction is completed and a final certificate of occupancy has been issued.

(ii) Government-assisted non-construction projects or contracts covered by this paragraph shall be subject to the hiring and reporting requirements set forth in this paragraph for as long as the benefit is being received.

(iii) A retail or commercial tenant that is a beneficiary as defined under § 2-219.01(1)(C) and is covered by this paragraph shall be subject to the hiring and reporting requirements set forth in this paragraph for 5 years following the commencement of the tenant's initial lease date.

(1A)(A) The Mayor shall include in each government-assisted construction project or contract that receives government assistance totaling \$5 million or more, a provision requiring that:

(i) At least 20% of journey worker hours by trade shall be performed by District residents;

(ii) At least 60% of apprentice hours by trade shall be performed by District residents;

(iii) At least 51% of the skilled laborer hours by trade shall be performed by District residents; and

(iv) At least 70% of common laborer hours shall be performed by District residents.

(B) Collective bargaining agreements shall not be a basis for a waiver from this requirement.

(C) As part of the employment plan required by subparagraph (F)(ii) of this paragraph, each beneficiary covered by this paragraph shall choose whether all residency work requirements shall be:

(i) Cumulative of all hours worked, including those hours worked by subcontractors at any tier who work on the project or contract; or

(ii) Met by each beneficiary covered by this paragraph and each individual subcontractor at any tier who works on the project or contract.

(D) Each month following the start of the project or contract, beneficiaries covered by this paragraph shall submit to the Department of Employment Services copies of their monthly and cumulative certified payrolls, monthly and cumulative certified payrolls from all subcontractors at any tier working on the project or contract, as well as a report of the total monthly direct and indirect labor costs associated with the project or contract.

(E) Government-assisted construction projects or contracts covered by this paragraph shall be subject to the hiring and reporting requirements set forth in this paragraph until construction is completed and a final certificate of occupancy has been issued.

(F)(i) Bids and proposals responding to a solicitation for a government-assisted project or contract covered by this paragraph shall include an initial employment plan outlining the bidder or offeror's strategy to meet the local hiring requirements as part of its response to the solicitation. These plans shall be evaluated and scored by the Mayor based on the criteria listed in sub-sub-subparagraphs (I), (II), and (III) of this sub-subparagraph. The evaluation shall be worth 10% of the overall score of the bid or proposal. The employment plan shall include the following:

(I) Descriptions of the health and retirement benefits provided to employees who worked on any of the bidder or offeror's past 3 completed projects or contracts;

(II) A description of the bidder or offeror's efforts to provide District residents with ongoing employment and training opportunities after they complete work on the job for which they were initially hired; and

(III) A disclosure of past compliance with the Workforce Act and the Davis-Bacon Act of 1931, approved March 3, 1931 (46 Stat. 1494; 40 U.S.C. § 3141 et seq.) ("Davis-Bacon Act"), where applicable, on projects or contracts completed within the last 2 years.

(ii) The winning bidder or offeror shall submit a revised employment plan to the Mayor for approval prior to beginning work associated with the relevant government project or contract. The employment plan shall include:

(I) A projection of the total number of hours to be worked on the project or contract by trade;

(II) A projection of the total number of journey worker hours, by trade, to be worked on the project or contract and the total number of journey worker hours, by trade, to be worked by District residents;

(III) A projection of the total number of apprentice hours, by trade, to be worked on the project or contract and the total number of apprentice hours, by trade, to be worked by District residents;

(IV) A projection of the total number of skilled laborer hours, by trade, to be worked on the project or contract and the total number of skilled laborer hours, by trade, to be worked by District residents;

(V) A projection of the total number of common laborer hours to be worked on the project or contract and the total number of common laborer hours to be worked by District residents;

(VI) A timetable outlining the total hours worked by trade over the life of the project or contract and an associated hiring schedule;

(VII) Descriptions of the skill requirements by job title or position, including industry-recognized certifications required for the different positions;

(VIII) A strategy to fill the hours required to be worked by District residents pursuant to this paragraph, including a component on communicating these requirements to contractors and subcontractors and a component on potential community outreach partnerships with the University of the District of Columbia, the University of the District of Columbia Community College, the Department of Employment Services, Jointly Funded Apprenticeship Programs, or other government-approved, community-based job training providers;

(IX) A remediation strategy to ameliorate any problems associated with meeting these hiring requirements, including any problems encountered with contractors and subcontractors;

(X) The designation of a senior official from the general contractor who will be responsible for implementing the hiring and reporting requirements;

(XI) Descriptions of the health and retirement benefits that will be provided to District residents working on the project or contract;

(XII) A strategy to ensure that District residents who work on the project or contract receive ongoing employment and training opportunities after they complete work on the job for which they were initially hired and a review of past practices in continuing to employ District residents from one project or contract to the next;

(XIII) A strategy to hire graduates of District of Columbia Public Schools, District of Columbia public charter schools, and community-based job training providers, and hard-to-employ residents; and

(XIV) A disclosure of past compliance with the Workforce Act and the Davis-Bacon Act, where applicable, and the bidder or offeror's general District-resident hiring practices on projects or contracts completed within the last 2 years.

(iii) The Mayor shall require all beneficiaries of government-assisted projects or contracts covered by this paragraph that are not awarded through

the contracting process to develop and submit to the Department of Employment Services the employment plan required in sub-subparagraph (ii) of this subparagraph.

(iv) Once approved, the employment plan required by sub-subparagraph (ii) of this subparagraph shall not be amended except with the approval of the Mayor.

(G) For the purpose of calculating hours worked by District residents, beneficiaries covered by this paragraph may receive double credit for hours worked by District residents who are certified by the Department of Employment Services as hard to employ as long as they include the resident's hard-to-employ certification as part of the monthly reporting. No more than 15% of the total hours worked by District residents may be comprised of double-credit hours.

(H) For the purpose of calculating hours worked by District residents, beneficiaries covered by this paragraph may count any hours worked by District residents on other completed projects or contracts subject to and in excess of the Workforce Act's hiring requirements that are certified by the Mayor.

(I) Within one year of February 24, 2012, the Mayor shall review the hiring and reporting requirements set forth by this paragraph to determine the appropriateness of each percentage and make relevant findings of the determination in a report to the Council. After the initial submission of this report the Mayor shall regularly, but at least once every 3 years, conduct a new review of the hiring and reporting requirements set forth by this paragraph to determine the appropriateness of each percentage and make relevant findings of the determination in a report to the Council.

(J) The Department of Employment Services shall consider requests from beneficiaries to recommend to the D.C. Apprenticeship Council to alter the ratio of journey worker to apprentice positions as long as the request does not jeopardize the quality or safety of the project or contract and there is a compelling District-resident hiring rationale.

(1B)(A) Within one year of February 24, 2012, the Mayor shall issue rules establishing enhanced hiring and reporting requirements for government-assisted non-construction projects or contracts that receive government assistance totaling \$5 million or more.

(B)(i) These rules shall include industry-specific requirements by percentage of total hours worked for full-time and part-time hourly wage employees and by percentage of full-time and part-time salaried employees, broken out by job category. The proposed rules shall also establish the length of time that these projects or contracts shall comply with the hiring and reporting requirements.

(ii) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, by resolution, within this 45-day review period, the proposed rules shall be deemed disapproved.

(iii) Until the final rules have been adopted after approval by the Council pursuant to this paragraph and paragraph (1C)(F) of this subsection,

government-assisted non-construction projects or contracts that receive government assistance totaling \$5 million or more shall be subject to the hiring and reporting requirements set forth in paragraph (1) of this subsection.

(1C)(A) Once final rules have been adopted after Council approval pursuant to paragraph (1B) of this subsection and subparagraph (F) of this paragraph, the Mayor shall include these District hiring and reporting requirements in each government-assisted non-construction project or contract that receives government assistance totaling \$5 million or more. These government-assisted non-construction projects or contracts shall be subject to the procedures set forth in this paragraph.

(B)(i) Bids and proposals responding to a solicitation for a government-assisted project or contract covered by this paragraph shall include an initial employment plan outlining the bidder or offeror's strategy to meet the local hiring requirements as part of its response to the solicitation. These plans shall be evaluated and scored by the Mayor based on the criteria listed in sub-sub-subparagraphs (I), (II), and (III) of this sub-subparagraph. The evaluation shall be worth 10% of the overall score of the bid or proposal. The employment plan shall include the following:

(I) Descriptions of the health and retirement benefits provided to employees who worked on any of the bidder or offeror's past 3 completed projects or contracts;

(II) A description of the bidder or offeror's efforts to provide District residents with ongoing employment, training, and career advancement opportunities; and

(III) A disclosure of past compliance with the Workforce Act, where applicable, on projects or contracts completed within the past 2 years.

(ii) The winning bidder or offeror shall submit a revised employment plan to the Mayor for approval, before beginning work associated with the project or contract. The revised employment plan shall include:

(I) A projection of the total number of hours to be worked by full-time and part-time hourly wage employees on an annual basis by job category and the total number of hours to be worked by full-time and part-time hourly wage employees who are District residents;

(II) A projection of the total number of full-time and part-time salaried employees on an annual basis by job category and the total number of full-time and part-time salaried employees that will be District residents;

(III) A timetable outlining the total hours worked by full-time and part-time hourly wage employees by job category and the total number of full-time and part-time salaried employees by job category over the duration of the life of the hiring requirements set forth by the Department of Employment Services and an associated hiring schedule which predicts when specific job openings will be available;

(IV) Descriptions of the skill requirements, including industry-recognized certifications required for the different positions;

(V) A strategy to fill the District-resident hiring requirements, including whether the bidder plans to pursue potential community outreach partnerships with the University of the District of Columbia, the University of

the District of Columbia Community College, the Department of Employment Services, or other government-approved, community-based job training providers;

(VI) A remediation strategy to ameliorate any problems associated with meeting these hiring requirements;

(VII) The designation of a senior official from the beneficiary who will be responsible for implementing the hiring and reporting requirements;

(VIII) Descriptions of the health and retirement benefits that will be provided to District residents working on the project or contract;

(IX) A strategy to hire graduates of District of Columbia Public Schools, District of Columbia public charter schools, and community-based job training providers, and hard-to-employ residents; and

(X) A disclosure of past compliance with the Workforce Act, where applicable, and the bidder or offeror's general District hiring practices on projects or contracts completed within the past 2 years.

(iii) The Mayor shall require all beneficiaries of government-assisted projects or contracts covered by this paragraph that are not awarded through the contracting process to develop and submit to the Department of Employment Services the employment plan required in sub-subparagraph (ii) of this subparagraph.

(iv) Once approved, the employment plan required by sub-subparagraph (ii) of this subparagraph shall not be amended except with the approval of the Mayor.

(C) For the purpose of calculating hours worked and full-time and part-time salaried positions filled by District residents, beneficiaries covered by this paragraph may receive double credit for hours worked and for full-time and part-time salaried positions filled by District residents who are certified by the Department of Employment Services as hard to employ as long as they include the resident's hard-to-employ certification as part of the monthly reporting. No more than 15% of the total hours worked and full-time and part-time salaried positions filled by hard-to-employ District residents may be comprised of double-credit hours or double-credit full-time and part-time salaried positions.

(D) For the purpose of calculating hours worked and full-time and part-time salaried positions filled by District residents, beneficiaries covered by this paragraph may count any hours worked and full-time and part-time salaried positions filled by District residents on other completed projects or contracts subject to and in excess of the Workforce Act's hiring requirements that are certified by the Mayor.

(E) Within one year of the effective date of the rules approved by the Council pursuant to paragraph (1B) of this subsection, the Mayor shall review the hiring and reporting requirements set forth by this paragraph to determine the appropriateness of each percentage and make relevant findings of the determination in a report submitted to the Council. After the initial submission of this report the Mayor shall regularly, but at least once every 3 years, conduct a new review of the hiring and reporting requirements set forth by this paragraph to determine the appropriateness of each percentage and make relevant findings of the determination in a report submitted to the Council.

(F) Within 90 days of the effective date of the rules approved by the Council pursuant to paragraph (1B) of this subsection, the Mayor shall issue rules to implement the provisions of this paragraph. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(2) With the submission of the final request for payment from the District, the beneficiary shall:

(A) Document in a report to the Mayor its compliance with paragraph (1), (1A), (1B), or (1C) of this subsection; or

(B) Submit a request to the Mayor for a waiver of compliance with paragraphs (1), (1A), (1B), or (1C) of this subsection, which shall include the following documentation:

(i) Material supporting a good-faith effort to comply;

(ii) Referrals provided by the Department of Employment Services and other referral sources; and

(iii) Advertisement of job openings listed with the Department of Employment Services and other referral sources.

(3)(A) The Mayor may waive the provisions of paragraph (1), (1A), (1B), or (1C) of this subsection if the Mayor finds that:

(i) The Department of Employment Services has certified that a good-faith effort to comply has been demonstrated by the beneficiary;

(ii)(I) The beneficiary is located outside of the Washington Standard Metropolitan Statistical Area;

(II) None of the contract work is performed inside the Washington Standard Metropolitan Statistical Area;

(III) The beneficiary published each job opening or part-time work needed for 7 calendar days in a District newspaper of city-wide circulation; and

(IV) The Department of Employment Services certifies that there are insufficient eligible applicants from the First Source Register that possess the skills required by the positions, or the eligible applicants are not available for part-time work or do not have a means to travel to the onsite job; or

(iii) The beneficiary enters into a special workforce development training or placement arrangement with the Department of Employment Services.

(B) The Department of Employment Services shall consider the following when making a determination of a good-faith effort to comply:

(i) Whether the Department of Employment Services has certified that there is an insufficient number of District residents in the labor market who possess the skills required to fill the positions that were created as a result of the project or contract;

(ii) Whether the beneficiary posted the jobs on the Department of Employment Services job website for a minimum of 10 calendar days;

(iii) Whether the beneficiary posted each job opening or part-time work needed in a District newspaper with city-wide circulation for a minimum of 7 calendar days;

(iv) Whether the beneficiary has substantially complied with the relevant monthly reporting requirements set forth in this section;

(v) For government-assisted projects or contracts covered by paragraph (1A) or (1C) of this subsection, whether the beneficiary has submitted and substantially complied with its most recent employment plan that has been approved by the Department of Employment Services; and

(vi) Any additional documented efforts.

(4)(A) Willful breach of the employment agreement, or failure to submit the required hiring compliance report pursuant to paragraph (1), (1A), (1B), or (1C) of this subsection, or deliberate submission of falsified data, shall be enforced by the Mayor through the imposition of a monetary fine of 5% of the total amount of the direct and indirect labor costs of the project or contract, in addition to other penalties provided by law.

(B) Failure to meet the required hiring requirements pursuant to paragraph (1), (1A), (1B), or (1C) of this subsection or failure to receive a good-faith waiver pursuant to paragraph (3) of this subsection may result in the Mayor imposing a penalty equal to $\frac{1}{8}$ of 1% of the total amount of the direct and indirect labor costs of the project or contract for each percentage by which the beneficiary fails to meet the hiring requirements.

(C) Upon a second violation within a 10-year time frame of the required hiring or reporting requirements set forth within paragraphs (1), (1A), (1B), or (1C) of this subsection or failure to receive a good-faith waiver pursuant to paragraph (3) of this subsection, the Mayor shall debar a person or entity from consideration for award of contracts or subcontracts with the District of Columbia for a period of not more than 5 years.

(D) Upon a second violation within a 10-year time frame of the required hiring or reporting requirements set forth within paragraphs (1), (1A), (1B), or (1C) of this subsection or failure to receive a good-faith waiver pursuant to paragraph (3) of this subsection, the Mayor may deem a person or entity ineligible of consideration for government-assisted projects with the District of Columbia for a period of not more than 5 years.

(5) The beneficiary may appeal any decision of the Mayor regarding a contract pursuant to paragraph (4) of this subsection to the Contract Appeals Board. For those projects that are not awarded through the contracting process, the Mayor shall establish by rule an administrative appeals process that allows the beneficiary to appeal any decision of the Mayor pursuant to paragraph (4) of this subsection.

(6) The provisions of this subsection shall not apply to government-assisted projects or contracts entered into prior to September 6, 2001.

(f) Nonprofit organizations with 50 employees or less shall be exempt from subsection (e) of this section.

(June 29, 1984, D.C. Law 5-93, § 4, 31 DCR 2545; Mar. 17, 1993, D.C. Law 9-210, § 2(c), 40 DCR 19; Sept. 6, 2001, D.C. Law 14-24, § 2, 48 DCR 5793; Apr. 8, 2005, D.C. Law 15-295, § 3, 52 DCR 1479; Feb. 24, 2012, D.C. Law 19-84, § 2(b), 58 DCR 11170.)

Cross references. — Business and economic development, tenant businesses in “business incubator” program, execution of first source employment agreements, see § 2-1209.08.

Prior Codifications. — 1981 Ed., § 1-1163.

Effect of amendments. — D.C. Law 14-24 added subsecs. (c) to (f).

D.C. Law 15-295 rewrote subsec. (f) which had reads follows: “(f) Nonprofit organizations shall be exempt from subsection (e) of this section.”

D.C. Law 19-84, in subsec. (a), substituted “government-assisted project or contract” for “government-assisted project”; rewrote subsecs. (c) and (e); and repealed subsec. (d).

Legislative history of Law 5-93. — For legislative history of D.C. Law 5-93, see Historical and Statutory Notes following § 2-219.01.

Legislative history of Law 9-210. — For legislative history of D.C. Law 9-210, see Historical and Statutory Notes following § 2-219.01.

Legislative history of Law 14-24. — Law 14-24, the “51 Percent District Residents New Hires Amendment Act of 2001”, was introduced

in Council and assigned Bill No. 14-27, which was referred to the Committee on Public Service. The Bill was adopted on first and second readings on April 3, 2001, and May 1, 2001, respectively. Approved without the signature of the Mayor on May 24, 2001, it was assigned Act No. 14-74 and transmitted to both Houses of Congress for its review. D.C. Law 14-24 became effective on September 6, 2001.

Legislative history of Law 15-295. — Law 15-295, the “Apprenticeship Requirements Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-884, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-691 and transmitted to both Houses of Congress for its review. D.C. Law 15-295 became effective on April 8, 2005.

Legislative history of Law 19-84. — For history of Law 19-84, see notes under § 2-219.01

Delegation of Authority. — Delegation of authority pursuant to Law 5-93, see Mayor’s Order 86-66, April 22, 1986.

§ 2-219.03a. Special hiring agreements.

(a) Whenever the Mayor determines that the goal of increasing employment opportunities for District residents may be better served by establishing hiring goals in specific job categories for specific government-assisted projects or contracts, the Mayor may enter into agreements with beneficiaries or their contractors and subcontractors to provide for increased hiring in specific job categories. Compliance with this agreement shall be deemed compliance with the requirements of this part. Non-compliance with this agreement shall be treated in the same manner as a violation of any other requirement of this part.

(b) The Mayor may direct the Director of each District agency, the Chief Procurement Officer, or each District contracting officer to develop and report on performance goals for each District agency in furtherance of the objectives of this part.

(June 29, 1984, D.C. Law 5-93, § 4a, as added June 8, 2006, D.C. Law 16-118, § 302(b), 53 DCR 2602; Feb. 24, 2012, D.C. Law 19-84, § 2(c), 58 DCR 11170.)

Effect of amendments. — D.C. Law 19-84 substituted “government-assisted project or contract” for “government-assisted project”.

Legislative history of Law 16-118. — For Law 16-118, see notes following § 2-220.01.

Legislative history of Law 19-84. — For history of Law 19-84, see notes under § 2-219.01.

Delegation of Authority. — Delegation of Authority pursuant to D.C. Law 16-118, the “Way to Work Amendment Act of 2006”, see Mayor’s Order 2006-122, September 27, 2006 (53 DCR 9313).

§ 2-219.04. Reports.

The Mayor shall submit a semiannual report to the Council of the District of Columbia on January 31st and July 31st of each year. The report shall include, for each preceding 6-month period:

- (1) The number of government-assisted projects or contracts for which employment agreements were executed;
- (2) The number of jobs that result from employment agreements;
- (3) The number of District residents actually employed in government-assisted projects or contracts; and
- (4) The number of names of unemployed District residents on the First Source Register.

(June 29, 1984, D.C. Law 5-93, § 5, 31 DCR 2545; Mar. 14, 1985, D.C. Law 5-159, § 5, 32 DCR 30; Mar. 17, 1993, D.C. Law 9-210, § 2(d), 40 DCR 19; Feb. 24, 2012, D.C. Law 19-84, § 2(d), 58 DCR 11170.)

Prior Codifications. — 1981 Ed., § 1-1164.

Effect of amendments. — D.C. Law 19-84 substituted “government-assisted project or contract” for “government-assisted project”.

Legislative history of Law 5-93. — For legislative history of D.C. Law 5-93, see Historical and Statutory Notes following § 2-219.01.

Legislative history of Law 5-159. — For legislative history of D.C. Law 5-159, see Historical and Statutory Notes following § 2-215.09.

Legislative history of Law 9-210. — For legislative history of D.C. Law 9-210, see Historical and Statutory Notes following § 2-219.01.

Legislative history of Law 19-84. — For history of Law 19-84, see notes under § 2-219.01.

Delegation of Authority. — Delegation of authority pursuant to Law 5-93, see Mayor’s Order 86-66, April 22, 1986.

§ 2-219.04a. Modernization of First Source recordkeeping.

Within 120 days of February 24, 2012, the Department of Employment Services shall provide public access on its website to all employment agreements entered into in 2009 through the present and shall make available online all future employment agreements, their status of compliance, and the project or contract’s assigned Contracting Officer or First Source Compliance Officer and their contact information.

(June 29, 1984, D.C. Law 5-93, § 5a, as added Feb. 24, 2012, D.C. Law 19-84, § 2(e), 58 DCR 11170.)

Legislative history of Law 19-84. — For history of Law 19-84, see notes under § 2-219.01.

§ 2-219.04b. Establishment of a workforce intermediary pilot program.

(a)(1) By April 1, 2012, the Mayor shall establish a workforce intermediary pilot program for Fiscal Year 2012 based on Council and Mayor-approved recommendations made by the Workforce Intermediary Task Force established by the Workforce Intermediary Task Force Establishment Second Emergency

Act of 2011, effective October 18, 2011 (D.C. Act 19-167; 58 DCR 8900), or succeeding legislation.

(2) The workforce intermediary pilot program shall act as an intermediary between employers and training providers to provide employers with qualified District resident job applicants.

(3) The workforce intermediary pilot program shall have a start-up budget not to exceed \$2 million, which shall be funded by all funds deposited in the District of Columbia Jobs Trust Fund ("Fund"), established in § 2-219.04c, and other existing local funds.

(4) Thirty days before the end of the pilot program, the Deputy Mayor for Planning and Economic Development, in consultation with the Department of Employment Services and the workforce intermediary, shall develop a progress report and recommendations for continued operations of the workforce intermediary that take into account the Council and Mayor-approved recommendations made by the Workforce Intermediary Task Force.

(June 29, 1984, D.C. Law 5-93, § 5b, as added Feb. 24, 2012, D.C. Law 19-84, § 2(e), 58 DCR 11170.)

Legislative history of Law 19-84. — For history of Law 19-84, see notes under § 2-219.01.

§ 2-219.04c. Establishment of the District of Columbia Jobs Trust Fund.

(a) There is established as a nonlapsing fund the District of Columbia Jobs Trust Fund, which shall be administered by the Deputy Mayor for Planning and Economic Development. The funds in the Fund shall be used solely for the purpose of establishing and operating the workforce intermediary pilot program, established in § 2-219.04b, or any succeeding program. The following shall be deposited into the Fund:

(1) Voluntary and negotiated contributions and donations, including past contributions for similar purposes that have yet to be collected or expended; and

(2) All outstanding monetary fines for breach of this part.

(b) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(June 29, 1984, D.C. Law 5-93, § 5c, as added Feb. 24, 2012, D.C. Law 19-84, § 2(e), 58 DCR 11170.)

Legislative history of Law 19-84. — For history of Law 19-84, see notes under § 2-219.01.

§ 2-219.05. Rules.

(a)(1) Except as provided in § 2-219.03(e)(1B) and (1C), within 180 days of February 24, 2012, the Mayor, pursuant to subchapter I of Chapter 5 of this title [§ 2-501 et seq.], shall issue rules to implement the provisions of the Workforce Act.

(2) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the rules shall be deemed approved.

(b) Any subsequent rules issued by the Mayor to implement the provisions of this part shall be submitted to the Council for a 45-day period of review in accordance with subsection (a)(2) of this section.

(June 29, 1984, D.C. Law 5-93, § 6, 31 DCR 2545; Feb. 24, 2012, D.C. Law 19-84, § 2(f), 58 DCR 11170.)

Prior Codifications. — 1981 Ed., § 1-1165.

Effect of amendments. — D.C. Law 19-84 rewrote the section, which formerly read:

“The Mayor shall issue rules to carry out the purposes of this part not later than 60 days after June 29, 1984.”

Legislative history of Law 5-93. — For legislative history of D.C. Law 5-93, see Historical and Statutory Notes following § 2-219.01.

Legislative history of Law 19-84. — For history of Law 19-84, see notes under § 2-219.01.

Delegation of Authority. — Delegation of authority pursuant to Law 5-93, see Mayor’s Order 86-66, April 22, 1986.

PART B.

FIRST SOURCE COMPLIANCE.

§ 2-219.31. Short title.

This part may be cited as the “First Source Compliance Act of 2008”.

(Aug. 16, 2008, D.C. Law 17-219, § 1018, 55 DCR 7598.)

Emergency legislation. — For temporary (90 day) amendment of D.C. Law 17-219, § 1023, see § 201(a) of Fiscal Year 2009 Balanced Budget Support Emergency Amendment Act of 2008 (D.C. Act 17-572, December 2, 2008, 55 DCR 12452).

For temporary (90 day) amendment of section, see § 201(a) of Fiscal Year 2009 Balanced Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-13, February 23, 2009, 56 DCR 1920).

Legislative history of Law 17-219. — Law 17-219, the “Fiscal Year 2009 Budget Support Act of 2008”, was introduced in Council and assigned Bill No. 17-678, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 13, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 26, 2008, it was assigned Act No. 17-419 and transmitted to both Houses of Congress for its review. D.C. Law 17-219 became effective on August 16, 2008.

§ 2-219.32. Definitions.

For the purposes of this part, the term:

(1) “Executive Director” means the Executive Director of the Office of First Source Compliance.

(2) “Office” means the Office of First Source Compliance.

(3) “First Source Employment Agreement” means the requirements of part A of this subchapter [§ 2-219.01 et seq.].

(Aug. 16, 2008, D.C. Law 17-219, § 1019, 55 DCR 7598.)

Legislative history of Law 17-219. — For Law 17-219, see notes following § 2-219.31.

§ 2-219.33. Establishment of the Office of First Source Compliance.

Pursuant to § 1-204.04(b), the Council establishes, as of October 1, 2008, the Office of First Source Compliance, as a single administrative unit within the Department of Employment Services, to enforce, monitor, and ensure compliance with part A of this subchapter [§ 2-219.01 et seq.], by each beneficiary of government-assisted projects in the District of Columbia.

(Aug. 16, 2008, D.C. Law 17-219, § 1020, 55 DCR 7598.)

Legislative history of Law 17-219. — For Law 17-219, see notes following § 2-219.31.

§ 2-219.34. Functions and duties.

(a) The Office shall:

(1) Monitor and track each beneficiary of government-assisted projects in the District to ensure compliance with the First Source Employment Agreement;

(2) Ensure that each beneficiary who is presently working on a governmental-assisted project or is bidding on a governmental-assisted project is in compliance with the First Source Employment Agreement;

(3) Require the beneficiary to submit to the Office a report on the 15th of each month on a form proposed by the Mayor; and

(4) Submit to the Council and the Mayor a quarterly report on a form proposed by the Mayor.

(b) The Department of Employment Services shall meet with the Council’s Committee on Workforce Development and Government Operations and the members of the affected business community. Based on such meetings, the Department of Employment Services shall prepare recommendations regarding additional proposed functions and duties of the Office and shall submit the recommendations to the Mayor.

(c) Based upon the recommendations submitted to the Mayor pursuant to subsection (b) of this section, on or before October 31, 2008, the Mayor shall submit an act to the Council:

(1) Establishing any additional functions and duties of the Office;

(2)(A) Proposing penalties under § 2-219.03(e)(4), for beneficiaries of

government-assisted projects who do not comply with the requirements of part A of this subchapter [§ 2-219.01 et seq.].

(B) Any monetary penalties proposed shall be used for job-training programs; and

(3) Proposing an appeal process, which may include the Contract Appeals Board appellate process, including its scope, under § 2-219.03(e)(5).

(Aug. 16, 2008, D.C. Law 17-219, § 1021, 55 DCR 7598.)

Legislative history of Law 17-219. — For Law 17-219, see notes following § 2-219.31.

§ 2-219.35. Executive Director.

The Office shall be headed by an Executive Director appointed by the Mayor. The Executive Director shall be a resident of the District of Columbia or agree to become a resident of the District of Columbia within 180 days of appointment by the Mayor. The Executive Director shall employ staff as needed, in accordance with annual appropriations.

(Aug. 16, 2008, D.C. Law 17-219, § 1022, 55 DCR 7598.)

Legislative history of Law 17-219. — For Law 17-219, see notes following § 2-219.31.

PART C.

STIMULUS ACCOUNTABILITY.

§ 2-219.51. Reporting requirements for entities receiving grants under the federal recovery act.

All nonprofit organizations, companies, associations, contractors, and subcontractors who receive a grant or funding under the American Recovery and Reinvestment Act of 2009, approved February 17, 2009 (Pub. L. No. 111-5; 98 Stat. 1861) (“ARRA”), shall:

(1) As a condition of the grant or funding, list all jobs that shall be created as a result of the grant or funding on the Department of Employment Services website;

(2) Provide the list required by paragraph (1) of this section to the Department of Employment Services; and

(3) Inform the Department of Employment Services of the number of District residents hired for ARRA-funded positions once the positions created as a result of a grant or funding under the ARRA are filled.

(July 23, 2010, D.C. Law 18-194, § 2, 57 DCR 4512.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of the Stimulus Accountability Temporary Act of 2009

(D.C. Law 18-75, October 22, 2009, law notification 56 DCR 8660).

Emergency legislation. — For temporary

(90 day) addition, see § 2 of Stimulus Accountability Emergency Act of 2009 (D.C. Act 18-143, July 13, 2009, 56 DCR 5872).

For temporary (90 day) addition, see § 2 of Stimulus Accountability Congressional Review Emergency Act of 2009 (D.C. Act 18-194, October 5, 2009, 56 DCR 8124).

Legislative history of Law 18-194. — Law 18-194, the “Stimulus Accountability Act of 2010”, was introduced in Council and assigned

Bill No. 18-350, which was referred to the Committee on Housing Safety and Workforce Development. The Bill was adopted on first and second readings on April 20, 2010, and May 4, 2010, respectively. Signed by the Mayor on May 19, 2010, it was assigned Act No. 18-405 and transmitted to both Houses of Congress for its review. D.C. Law 18-194 became effective on July 23, 2010.

§ 2-219.52. Requirements of the Mayor.

(a) The Mayor, through the Department of Employment Services, shall create a listing of all jobs that have become available through grants or funding under the ARRA.

(b) The Mayor, through the Department of Employment Services, shall maintain a list of ARRA-funded positions that have been filled by District residents. The list of District residents hired as a result of ARRA grants or funding shall be reported to the Council.

(July 23, 2010, D.C. Law 18-194, § 3, 57 DCR 4512.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 3 of the Stimulus Accountability Temporary Act of 2009 (D.C. Law 18-75, October 22, 2009, law notification 56 DCR 8660).

Emergency legislation. — For temporary (90 day) addition, see § 3 of Stimulus Accountability Emergency Act of 2009 (D.C. Act 18-143, July 13, 2009, 56 DCR 5872).

For temporary (90 day) addition, see § 3 of Stimulus Accountability Congressional Review Emergency Act of 2009 (D.C. Act 18-194, October 5, 2009, 56 DCR 8124).

Legislative history of Law 18-194. — For Law 18-194, see notes following § 2-219.51.

Subchapter X-A. Living Wage Requirements.

§ 2-220.01. Short title.

This subchapter may be cited as the “Living Wage Act of 2006”.

(June 8, 2006, D.C. Law 16-118, § 101, 53 DCR 2602.)

Legislative history of Law 16-118. — Law 16-118, the “Way to Work Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-286 which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 7, 2006, and March 7, 2006, respectively. Signed by the Mayor on March 23, 2006,

it was assigned Act No. 16-335 and transmitted to both Houses of Congress for its review. D.C. Law 16-118 became effective on June 8, 2006.

Delegation of Authority. — Delegation of Authority pursuant to D.C. Law 16-118, the “Way to Work Amendment Act of 2006”, see Mayor’s Order 2006-122, September 27, 2006 (53 DCR 9313).

§ 2-220.02. Definitions.

For purposes of this subchapter, the term:

(1) “Affiliated employee” means any individual employed by a recipient who received compensation directly from government assistance or a contract with the District of Columbia government (“District Government”), including

any employee of a contractor or subcontractor of a recipient who performs services pursuant to government assistance or contract.

(2) “Contract” means a written agreement between a recipient and the District government.

(3) “Government assistance” means a grant, loan, or tax increment financing that results in a financial benefit from an agency, commission, instrumentality, or other entity of the District government.

(4) “Living wage” means an hourly wage rate of \$11.75 per hour, regardless of whether health care benefits are provided.

(5) “Recipient” means any individual, sole proprietorship, partnership, association, joint venture, limited liability company, corporation, or any other form of business that enters into a contract with or receives government assistance from the District government.

(June 8, 2006, D.C. Law 16-118, § 102, 53 DCR 2602.)

Legislative history of Law 16-118. — For Law 16-118, see notes following § 2-220.01.

§ 2-220.03. Living wage payment.

(a) All recipients of contracts or government assistance in the amount of \$100,000 or more shall pay their affiliated employees no less than the living wage. All subcontractors of recipients of these contracts that receive funds of \$15,000 or more shall pay their affiliated employees no less than the living wage; provided, that this receipt of funds is from the contract funds received by the recipient from the District government. All subcontractors of recipients of government assistance shall pay their affiliated employees the living wage if the subcontractor receives \$50,000 or more from a recipient; provided, that this receipt of funds is from government assistance received by the recipient from the District of Columbia.

(b) The living wage shall be paid to employees of the District government commencing March 1, 2006; provided, that the wage of any such employee established under an existing collective bargaining agreement or by the recipients of a federal law or grant shall continue as long as that agreement, law, or grant remains in effect.

(c) The Department of Employment Services shall adjust this rate for the previous calendar year, on an annual basis by the annual average increase, if any, in the Consumer Price Index for all Urban Consumers in the Washington Metropolitan Statistical Area published by the Bureau of Labor Statistics of the United States Department of Labor up to 3%. This adjustment shall begin the 1st of January occurring at least one year following June 8, 2006. The Department shall calculate the adjustment to the nearest multiple of \$.05 and shall publish the adjusted rate not later than March 1 of each year. Any annual adjustment in excess of 3% shall be approved by the Mayor.

(d) The Mayor shall publish any adjustment to the living wage rate in the District of Columbia Register no later than 45 days after the rate is adjusted.

(e) Repealed.

(June 8, 2006, D.C. Law 16-118, § 103, 53 DCR 2602; Mar. 25, 2009, D.C. Law 17-353, § 318(a), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 repealed subsec. (e), which had read as follows: “(e) Funding for the implementation of this subchapter shall be subject to annual appropriations.”

Legislative history of Law 16-118. — For Law 16-118, see notes following § 2-220.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 2-218.42.

§ 2-220.04. Contents of contract; notice to subcontractors.

(a) All contracts and government assistance subject to this subchapter shall include the requirements under §§ 2-220.03, 2-220.06, 2-220.07, and 2-220.08.

(b) Each recipient of a contract or government assistance shall notify each subcontractor subject to this subchapter of the requirements as provided under subsection (a) of this section. The notification shall be in writing.

(June 8, 2006, D.C. Law 16-118, § 104, 53 DCR 2602.)

Legislative history of Law 16-118. — For Law 16-118, see notes following § 2-220.01.

§ 2-220.05. Exemptions.

The following types of contracts, government assistance, and employment shall be exempt from the requirement of this subchapter:

(1) Contracts or other agreements that are subject to higher wage level determinations required by federal law;

(2) Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;

(3) Contracts for electricity, telephone, water, sewer or other services delivered by a regulated utility;

(4) Contracts for services needed immediately to prevent or respond to a disaster or eminent [imminent] threat to public health or safety declared by the Mayor;

(5) Contracts or other agreements awarded to recipients that provide trainees with additional services including, but not limited to, case management and job readiness services; provided, that the trainees do not replace employees subject to this subchapter;

(6) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided, that he or she does not replace employees subject to this subchapter;

(7) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District;

(8) Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to section 501(c)(3) of

the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S. C. § 501(c)(3));

(9) Medicaid provider agreements for direct care services to Medicaid recipients; provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons, as those terms are defined in § 44-501; and

(10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

(June 8, 2006, D.C. Law 16-118, § 105, 53 DCR 2602; Mar. 2, 2007, D.C. Law 16-191, § 111, 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191, in par. (1), inserted “higher” preceding “wage level determinations”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the Living Wage Clarification Temporary Amendment Act of 2006 (D.C. Law 16-184, November 16, 2006, law notification 53 DCR 9651).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Living Wage Clarification Emergency Amendment Act of 2006 (D.C. Act 16-411, July 12, 2006, 53 DCR 5771).

For temporary (90 day) amendment of section, see § 2 of Living Wage Clarification Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-530, December 4, 2006, 53 DCR 9836).

Legislative history of Law 16-118. — For Law 16-118, see notes following § 2-220.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 2-218.02.

Legislative history of Law 16-294. — Law 16-294, the “Second Technical Amendments Act of 2006”, was introduced in Council and assigned Bill No. 16-996, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-653 and transmitted to both Houses of Congress for its review. D.C. Law 16-294 became effective on March 14, 2007.

Editor’s notes. — D.C. Law 16-294 purported to make the same amendment previously made by D.C. Law 16-191.

§ 2-220.06. Notice.

Each recipient and subcontractor of a recipient shall provide to each affiliated employee covered by this subchapter a fact sheet concerning the payment and enforcement requirements under §§ 2-220.03 and 2-220.08, and shall also post a notice concerning these requirements in a conspicuous site in its place of business. The Mayor shall provide the fact sheet and notice to each recipient which shall include:

- (1) Notice of the living wage hourly rate;
- (2) A summary of the requirements under §§ 2-220.03 and 2-220.07; and
- (3) Information concerning the enforcement of this subchapter including the name, address, and telephone number of the individual or entity to which complaints of noncompliance should be made.

(June 8, 2006, D.C. Law 16-118, § 106, 53 DCR 2602.)

Legislative history of Law 16-118. — For Law 16-118, see notes following § 2-220.01.

§ 2-220.07. Records.

All recipients and subcontractors shall retain payroll records created and maintained in the regular course of business under District of Columbia law for a period of at least 3 years from the payroll date for employees subject to § 2-220.03.

(June 8, 2006, D.C. Law 16-118, § 107, 53 DCR 2602.)

Legislative history of Law 16-118. — For Law 16-118, see notes following § 2-220.01.

§ 2-220.08. Enforcement.

The payment of wages required under this subchapter shall be consistent with and subject to the provisions of Chapter 13 of Title 32.

(June 8, 2006, D.C. Law 16-118, § 108, 53 DCR 2602.)

Legislative history of Law 16-118. — For Law 16-118, see notes following § 2-220.01.

§ 2-220.09. Waiver.

The Mayor may exempt a recipient from the requirements of this subchapter, subject to approval by the Council. Any entity requesting a waiver shall be required to demonstrate that the provisions of this subchapter will pose a significant financial hardship on the recipient that will result in the layoff of a substantial number of employees, substantial downsizing, or the inability to meet payroll. All requests for waivers shall be written and state the rationale for the request. Any waiver granted by the Mayor shall be subject to Council review and approval, by act.

(June 8, 2006, D.C. Law 16-118, § 109, 53 DCR 2602.)

Legislative history of Law 16-118. — For Law 16-118, see notes following § 2-220.01.

§ 2-220.10. Rules.

The Mayor shall issue rules to implement the provisions of this subchapter.

(June 8, 2006, D.C. Law 16-118, § 110, 53 DCR 2602.)

Legislative history of Law 16-118. — For Law 16-118, see notes following § 2-220.01.

§ 2-220.11. Applicability.

(a) The requirements of this subchapter shall apply to contracts and agreements for government assistance (“agreement”) entered into after June 8, 2006, and shall not apply to any existing agreement entered into prior to that date. Where an agreement is renewed or extended after that date, that renewal or extension shall be deemed a new agreement and shall trigger coverage

under this subchapter if the terms of the renewed or extended agreement otherwise meet the requirements for coverage under this subchapter.

(b) Notwithstanding the requirements of § 2-220.05(9), a home care agency, community residence facility, or group home for mentally retarded persons shall not be required to pay a living wage until implementing rules are published in the District of Columbia Register and any necessary state plan amendments are approved.

(June 8, 2006, D.C. Law 16-118, § 111, 53 DCR 2602.)

Legislative history of Law 16-118. — For Law 16-118, see notes following § 2-220.01.

Subchapter XI. Quick Payment Provisions.

§ 2-221.01. Definitions.

For the purposes of this subchapter, the term:

(1) “Business concern” means any person engaged in a trade or business and nonprofit entities operating as contractors.

(1A) “Contractor” means any entity that has a direct contract with a District agency, as that term is defined in paragraph (3) of this section.

(2) “Designated payment office” means the place named in the contract for forwarding the invoice for payment or, in certain instances, for approval.

(3) “District agency” means any office, department, division, board, commission, or other agency of the District government, including, unless otherwise provided, an independent agency, required by law or by the Mayor or the Council to administer any law or any rule adopted under the authority of a law. For the purposes of this definition, the term “independent agency” means any agency of government not subject to the administrative control of the Mayor and includes, but is not limited to, the Superior Court of the District of Columbia, District of Columbia Court of Appeals, Council of the District of Columbia, Board of Elections and Ethics, Armory Board, Zoning Commission, Convention Center Board of Directors, District of Columbia Board of Education, and Public Service Commission.

(4) “Proper invoice” means an invoice which contains or is accompanied by substantiating documentation required by regulation or contract.

(5) “Subcontractor” means any entity that furnishes labor, material, equipment, or services to a contractor in performance of the contractor’s contract with a District agency.

(Mar. 15, 1985, D.C. Law 5-164, § 2, 32 DCR 555; Mar. 20, 1992, D.C. Law 9-81, § 2(a), 39 DCR 681; Apr. 12, 1997, D.C. Law 11-259, § 307(a), 44 DCR 1423.)

Prior Codifications. — 1981 Ed., § 1-1171.
Legislative history of Law 5-164. — Law 5-164, the “District of Columbia Government Quick Payment Act of 1984,” was introduced in Council and assigned Bill No. 5-120, which was

referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1984 and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act

No. 5-229 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-81. — Law 9-81, the “District of Columbia Government Quick Payment Act of 1984 Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-156, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 3, 1991, and January 7, 1992, respectively. Signed by the Mayor on January 28,

1992, it was assigned Act No. 9-139 and transmitted to both House of Congress for its review. D.C. Law 9-81 became effective on March 20, 1992.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-213.02.

Delegation of Authority. — Delegation of authority under D.C. Law 5-164, see Mayor’s Order 85-119, July 18, 1985.

§ 2-221.02. Rules and regulations governing interest penalty payments by District agencies; computation and payment of penalties.

(a)(1) In accordance with rules and regulations issued by the Mayor of the District of Columbia (“Mayor”), each agency of the District of Columbia government (“District”), under the direct control of the Mayor, which acquires property or services from a business concern but which does not make payment for each complete delivered item of property or service by the required payment date shall pay an interest penalty to the business concern in accordance with this section on the amount of the payment which is due.

(2) Each rule or regulation issued pursuant to paragraph (1) of this subsection shall:

(A) Specify that the required payment date shall be:

(i) The date on which payment is due under the terms of the contract for the provision of the property or service; or

(ii) 30 calendar days, excluding legal holidays, after receipt of a proper invoice for the amount of the payment due, if a specific date on which payment is due is not established by contract;

(B)(i) Specify, in the case of any acquisition of meat or of a meat food product, a required payment date which is not later than 7 calendar days, excluding legal holidays, after the date of delivery of the meat or meat food product; and

(ii) Specify, in the case of any acquisition of a perishable agricultural commodity, a required payment date which is not later than 10 calendar days, excluding legal holidays, after the date of delivery of the perishable agricultural commodity pursuant to this subchapter;

(C) Specify separate required payment dates for contracts under which property or services are provided in a series of partial executions or deliveries, to the extent that the contract provides for separate payment for partial execution or delivery; and

(D) Require that, within 15 days after the date on which any invoice is received, District agencies notify the business concern in writing of any defect in the invoice or delivered goods, property or services or impropriety of any kind which would prevent the running of the time period specified in subparagraph (A)(ii) of this paragraph.

(b)(1) Interest penalties on amounts due to a business concern under this subchapter shall be due and payable to the concern for the period beginning on

the day after the required payment date and ending on the date on which payment of the amount is made, except that no interest penalty shall be paid if payment for the complete delivered item of property or service concerned is made on or before: (A) the 3rd day after the required payment date, in the case of meat or a meat product, described in subsection (a)(2)(B)(i) of this section; (B) the 5th day after the required payment date, in the case of an agricultural commodity, described in subsection (a)(2)(B)(ii) of this section; or (C) the 15th day after the required payment date in the case of any other item. Interest, computed at a rate of not less than 1%, shall be determined by the Mayor by regulation.

(1A) Each contract executed pursuant to Chapter 3 of Title 2 shall include in the solicitation a description of the contractor's rights and responsibilities under the chapter.

(1B) Paragraphs (1) and (1A) of this subsection shall apply to claims arising after October 7, 1998.

(2) Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

(c) This section does not authorize the appropriation of additional funds for the payment of interest penalties required by this section. A District agency shall pay any interest penalty required by this section out of funds made available for the administration or operation of the program for which the penalty was incurred.

(d) Any contract awarded by a District agency shall include:

(1) A payment clause that obligates the contractor to take one of the 2 following actions within 7 days of receipt of any amount paid to the contractor by the District agency for work performed by any subcontractor under a contract:

(A) Pay the subcontractor for the proportionate share of the total payment received from the District agency that is attributable to the subcontractor for work performed under the contract; or

(B) Notify the District agency and the subcontractor, in writing, of the contractor's intention to withhold all or part of the subcontractor's payment with the reason for the nonpayment;

(2) An interest clause that obligates the contractor to pay interest to the subcontractor or supplier as provided in subsection (b)(1) and (2) of this section; and

(3) A clause that obligates the contractor to include in any subcontract a provision that requires each subcontractor to include the payment and interest clauses required under paragraphs (1) and (2) of this subsection in a contract with any lower-tier subcontractor or supplier.

(e)(1) A contractor's obligation to pay an interest charge to a subcontractor pursuant to subsection (d)(2) of this section shall not constitute an obligation of the District agency.

(2) A contract modification shall not be made for the purpose of providing reimbursement for any interest charge pursuant to subsection (d)(2) of this section.

(3) A cost reimbursement claim shall not include any amount for reimbursement for any interest charge pursuant to subsection (d)(2) of this section.

(f)(1) A dispute between a contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under the provisions of this subchapter does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(2) This subsection shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to a contractor or subcontractor in the event of a dispute involving late payment or nonpayment by a prime contractor or deficient subcontract performance or nonperformance by a subcontractor.

(Mar. 15, 1985, D.C. Law 5-164, § 3, 32 DCR 555; Mar. 20, 1992, D.C. Law 9-81, § 2(b), 39 DCR 681; Mar. 26, 1999, D.C. Law 12-175, § 902(a), 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-264, § 7(a), 46 DCR 2118.)

Section references. — This section is referred to in §§ 2-221.03 and 2-221.04.

Prior Codifications. — 1981 Ed., § 1-1172.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of the Quick Payment Temporary Amendment Act of 1998 (D.C. Law 12-159, October 7, 1998, law notification 45 DCR 7577).

Emergency legislation. — For temporary amendment of section, see § 2(a) of the Quick Payment Emergency Amendment Act of 1998 (D.C. Act 12-379, June 5, 1998, 45 DCR 4468).

Legislative history of Law 5-164. — For legislative history of D.C. Law 5-164, see Historical and Statutory Notes following § 2-221.01.

Legislative history of Law 9-81. — For legislative history of D.C. Law 9-81, see Historical and Statutory Notes following § 2-221.01.

Legislative history of Law 12-175. — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-618, which was referred to

the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Editor's notes. — Issuance of rules and regulations under Law 5-164: Section 8(b) of D.C. Law 5-164 provided that the rules and regulations required under the act shall be issued not later than 120 days after March 15, 1985.

CASE NOTES

ANALYSIS

In general.
Jurisdiction.

In general.

Proper measure of equitable adjustments with respect to public contracts is difference between what it would have cost to perform work as originally required and what it cost to perform work as changed. *General Ry. Signal Co. v. Washington Metropolitan Area Transit Authority*, 875 F.2d 320, 1989 U.S. App. LEXIS

6535 (C.A.D.C. 1989), writ of certiorari denied by 494 U.S. 1056, 110 S. Ct. 1524, 108 L. Ed. 2d 764, 1990 U.S. LEXIS 1629, 58 U.S.L.W. 3614 (1990).

When parties have struck bargain and included specific price for work to be performed pursuant to public contract, price is presumed to represent reasonable cost of work. *General Ry. Signal Co. v. Washington Metropolitan Area Transit Authority*, 875 F.2d 320, 1989 U.S. App. LEXIS 6535 (C.A.D.C. 1989), writ of certiorari denied by 494 U.S. 1056, 110 S. Ct. 1524, 108 L.

Ed. 2d 764, 1990 U.S. LEXIS 1629, 58 U.S.L.W. 3614 (1990).

In agreeing wholly to compensate public contractor for any cost sustained as a result of modifications in work it wanted performed, transit authority waived its immunity from liability for prejudgment interest. *General Ry. Signal Co. v. Washington Metropolitan Area Transit Authority*, 875 F.2d 320, 1989 U.S. App. LEXIS 6535 (C.A.D.C. 1989), writ of certiorari denied by 494 U.S. 1056, 110 S. Ct. 1524, 108 L. Ed. 2d 764, 1990 U.S. LEXIS 1629, 58 U.S.L.W. 3614 (1990).

Interest penalty under the Quick Payment Act (QPA) is applicable only to contractual obligations of the District of Columbia. *Prince Constr. Co. v. District of Columbia Contract Appeals Bd.*, 892 A.2d 380, 2006 D.C. App. LEXIS 28 (2006).

Jurisdiction.

Superior court consent judgment in favor of contractor barred contractor, on basis of judicial estoppel, from claiming before the Contract Appeals Board (CAB) that claim was contractual and entitled contractor to interest penalty under Quick Payment Act (QPA); the contractor necessarily admitted that its superior court

action was equitable because that court would not have had jurisdiction if the claim were contractual, and the contractor's claim before the CAB that it was paid under valid contracts was clearly inconsistent with its implicit earlier position that it accepted the payment in equity. *Prince Constr. Co. v. District of Columbia Contract Appeals Bd.*, 892 A.2d 380, 2006 D.C. App. LEXIS 28 (2006).

Contract Appeals Board (CAB) could entertain District of Columbia's motion to reconsider summary judgment that contractor was entitled to interest penalties under Quick Payment Act (QPA), even though District allegedly opposed summary judgment on ground that Superior Court consent judgment established equitable nature of contractor's claim; the first summary judgment order analyzed the conduct and actions of the parties, determined that a unified contract existed, and barely made reference to the consent judgment, but when the CAB granted the District's motion to reconsider, it based its decision almost exclusively on the language of the consent judgment and the memorandum of points and authorities the parties submitted with it. *Prince Constr. Co. v. District of Columbia Contract Appeals Bd.*, 892 A.2d 380, 2006 D.C. App. LEXIS 28 (2006).

§ 2-221.03. Interest penalty for failure to pay discounted price within specified period.

(a) If a business concern offers a District agency a discount from the amount otherwise due under a contract for property or services in exchange for payment within a specified period of time, the District agency may make payment in an amount equal to the discounted price only if payment is made within the specified period of time.

(b) Each District agency which violates subsection (a) of this section shall pay an interest penalty on any amount which remains unpaid in violation of subsection (a) of this section. The interest penalty shall accrue on the unpaid amount in accordance with the regulations issued pursuant to § 2-221.02, except that the required payment date with respect to the unpaid amount shall be the last day of the specified period of time described in subsection (a) of this section.

(Mar. 15, 1985, D.C. Law 5-164, § 4, 32 DCR 555.)

Section references. — This section is referred to in § 2-221.04.

Prior Codifications. — 1981 Ed., § 1-1173.

Legislative history of Law 5-164. — For

legislative history of D.C. Law 5-164, see Historical and Statutory Notes following § 2-221.01.

§ 2-221.04. Filing of claims; disputed payments.

(a)(1) Claims for interest penalties which a District agency has failed to pay in accordance with the requirements of §§ 2-221.02 and 2-221.03 shall be filed

with the contracting officer for a decision. Interest penalties under this subchapter shall not continue to accrue: (A) after the filing of an appeal for the penalties with the Contract Appeals Board; or (B) for more than one year.

(2) The contracting officer shall issue a decision within 60 days from the receipt of any claim submitted under this subchapter.

(3) Within 90 days from the receipt of a decision of the contracting officer, the contractor may appeal the decision to the Contract Appeals Board.

(4) The contractor shall file a claim for interest penalties and any amendments to such claim within 90 days after the principal is paid, except that if the contractor notifies the contracting officer in writing of the contractor's intent to file a claim within the 90-day period, the contractor shall be allowed 180 days after the principal is paid to file such claim.

(b) Except as provided in § 2-221.03 with respect to disputes concerning discounts, this subchapter shall not be construed to require interest penalties on payments which are not made by the required payment date by reason of a dispute between a District agency and a business concern over the amount of that payment or other allegations concerning compliance with a contract. Claims concerning any dispute, and any interest which may be payable with respect to the period while the dispute is being resolved, shall be subject to the ruling of the Contract Appeals Board.

(c)(1) With respect to any claim arising from a payment between March 15, 1985, and October 7, 1998, the contractor shall file a claim for interest penalties and any amendments to such claim with the contracting officer within 180 days of October 7, 1998.

(2) The 180 days specified in paragraph (1) of this subsection shall be extended to 270 days to file a claim if the contractor notifies the contracting officer in writing of the contractor's intent to file a claim for interest penalties within 180 days of October 7, 1998.

(3) A claim filed by a contractor may be amended at any time prior to the issuance of a decision by the contracting officer.

(d) Subsection (a) of this section shall apply to claims arising after October 7, 1998.

(Mar. 15, 1985, D.C. Law 5-164, § 5, 32 DCR 555; Mar. 26, 1999, D.C. Law 12-175, § 902(b), 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-264, § 7(b), 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 1-1174.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of the Quick Payment Temporary Amendment Act of 1998 (D.C. Law 12-159, October 7, 1998, law notification 45 DCR 7577).

Emergency legislation. — For temporary amendment of section, see § 2(b) of the Quick Payment Emergency Amendment Act of 1998 (D.C. Act 12-379, June 5, 1998, 45 DCR 4469).

Legislative history of Law 5-164. — For

legislative history of D.C. Law 5-164, see Historical and Statutory Notes following § 2-221.01.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 2-221.02.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 1-221.02.

CASE NOTES

Construction and application.

Interest penalties could not be assessed against the District of Columbia under the Quick Payment Act, due to its failure to pay charges for overtime use of leased buildings, for

that period during which an ownership dispute existed in partnership that leased the buildings. *Bembrey v. District of Columbia*, 758 A.2d 518, 2000 D.C. App. LEXIS 216 (2000).

§ 2-221.05. Required reports.

(a) Each district agency shall file with the Mayor and the Chief Financial Officer a detailed report on any interest penalty payments made pursuant to this subchapter during the preceding fiscal year.

(b) The report shall include the numbers, amounts, and frequency of interest penalty payments, and the reasons the payments were not avoided by prompt payment, and shall be delivered to the Mayor and the Chief Financial Officer within 60 days after the conclusion of each fiscal year.

(c) The Chief Financial Officer shall submit to the Mayor and the Council within 120 days after the conclusion of each fiscal year a report on District agency compliance with the requirements of this subchapter. The report shall include a summary of the report submitted by each District agency pursuant to this section and an analysis of the progress made in reducing interest penalty payments by that agency from previous years.

(Mar. 15, 1985, D.C. Law 5-164, § 6, 32 DCR 555; Apr. 12, 1997, D.C. Law 11-259, § 307(b), 44 DCR 1423; Oct. 22, 2009, D.C. Law 18-61, § 2, 56 DCR 6597.)

Prior Codifications. — 1981 Ed., § 1-1175.

Effect of amendments. — D.C. Law 18-61, in subsecs. (a), (b), and (c), substituted “Chief Financial Officer” for “Director of the Office of Contracting and Procurement”.

Legislative history of Law 5-164. — For legislative history of D.C. Law 5-164, see Historical and Statutory Notes following § 2-221.01.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-213.02.

Legislative history of Law 18-61. — Law 18-61, the “Quick Payment Amendment Act of 2009”, as introduced in Council and assigned Bill No. 18-1, which was referred to the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on June 30, 2009, and July 14, 2009, respectively. Signed by the Mayor on July 28, 2009, it was assigned Act No. 18-157 and transmitted to both Houses of Congress for its review. D.C. Law 18-61 became effective on October 22, 2009.

§ 2-221.06. Determination of receipt and payment dates; construction of rental contracts.

(a) An invoice shall be deemed to have been received by an agency on (1) the date on which the agency’s designated payment office actually receives a proper invoice, or (2) the date on which the agency accepts the property or service concerned, whichever is later.

(b)(1) District agencies shall mail or otherwise deliver checks to a business concern on or about the same day that the checks are dated.

(2) If a District agency makes a payment by check on or about same day

as the date of the check, then the payment shall be considered made on the date on which a check for payment is dated.

(c) A contract for the rental of real or personal property is a contract for the acquisition of that property.

(Mar. 15, 1985, D.C. Law 5-164, § 7, 32 DCR 555.)

Prior Codifications. — 1981 Ed., § 1-1176. torical and Statutory Notes following § 2-221.01.
Legislative history of Law 5-164. — For legislative history of D.C. Law 5-164, see His-

Subchapter XII. Employees of District Contractors and Instrumentality Whistleblower Protection.

§ 2-223.01. Definitions.

For purposes of this subchapter, the term:

(1) “Contract” means any contract for goods or services between the District government and another entity but excludes any collective bargaining agreement.

(2) “Contributing factor” means any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision.

(3) “Employee” means:

(A) Any person who is [a] former or current employee of or an applicant for employment by an instrumentality of the District government not covered by Chapter 6 of Title 1;

(B) Any person who is a former or current employee of any entity that has a contract with the District government to supply goods or services and who is engaged in performing such contract; or

(C) Any person who is a security officer and is or was employed in that capacity by a person who or entity that provides security services.

(4) “Illegal order” means a directive to violate or to assist in violating a federal, state, or local law, rule, or regulation.

(5) “Instrumentality” means a quasi-governmental entity that operates in part with District funds, including, but not limited to, the District of Columbia Water and Sewer Authority, established by § 34-2202.02(a); the Health and Hospitals Public Benefits Corporation, established by Chapter 11 of Title 44; the Public Service Commission, established by § 34-801; the Washington Convention and Sports Authority established by § 10-1202.04; the Committee to Promote the District of Columbia; the National Capital Revitalization Corporation, established by § 2-1219.02 [repealed]; and the Washington Metropolitan Area Transit Authority, established by subchapter IV of Chapter 11 of Title 9.

(6) “Prohibited personnel action” includes but is not limited to: recommended, threatened, or actual termination, demotion, suspension, or reprimand; involuntary transfer, reassignment or detail; referral for psychiatric or psychological counseling; failure to hire or promote or take other favorable personnel action; or in any other manner retaliating against an employee

because that employee has made a protected disclosure or refuses to comply with an illegal order, as those terms are defined in this section.

(6A) "Prohibited procurement action" includes any recommended, threatened, or actual proceeding, based wholly or in part on a protected disclosure made by an employee, officer, or owner of a contractor:

(A) Terminate a contract by default or convenience without adequate and documented justification;

(B) Unreasonably delay or withhold payment on legitimate vouchers or claims of a contractor;

(C) Impose conditions or requirements on the contractor not required by the contract;

(D) Take any action designed to or having the effect of impeding a contractor's performance; or

(E) Take any other action designed to or having the effect of injuring the business or reputation of a contractor.

(7) "Protected disclosure" means any disclosure of information, not specifically prohibited by statute, by an employee to a supervisor or to a public body that the employee reasonably believes evidences:

(A) Gross mismanagement in connection with the administration of a public program or the execution of a public contract;

(B) Gross misuse or waste of public resources or funds;

(C) Abuse of authority in connection with the administration of a public program or the execution of a public contract;

(D) A violation of a federal, state, or local law, rule, or regulation, or of a term of a contract between the District government and a District government contractor which is not of a merely technical or minimal nature; or

(E) A substantial and specific danger to the public health and safety.

(8) "Public body" means:

(A) The United States Congress, the Council, any state legislature, the District of Columbia Office of the Inspector General, the Office of the District of Columbia Auditor, the District of Columbia Financial Responsibility and Management Assistance Authority, or any member or employee of one of these bodies;

(B) The federal, the District of Columbia, or any state or local judiciary, any member or employee of these judicial branches, or any grand or petit jury;

(C) Any federal, District of Columbia, state, or local regulatory, administrative, or public agency or authority or instrumentality of one of these agencies or authorities;

(D) Any federal, District of Columbia, state, or local law enforcement agency, prosecutorial office, or police or peace officer;

(E) Any federal, District of Columbia, state, or local department of an executive branch of government; or

(F) Any division, board, bureau, office, committee, commission or independent agency of any of the public bodies described in subparagraphs (A) through (E) of this paragraph.

(8A) "Security officer" means an individual appointed under § 5-129.02, and shall have the same meaning as provided in section 2100 of Title 17 of the District of Columbia Municipal Regulations.

(9) “Supervisor” means any individual employed by a District instrumentality, a District government contractor, or a person who or entity that employs security officers who has authority to do the following:

(A) To hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to evaluate their performance, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment; or

(B) To effectively recommend or to take remedial or corrective action for the violation of a law, rule, regulation or contract term that an employee may allege or report pursuant to this subchapter.

(10) “Whistleblower” means an employee or contractor who makes or is perceived to have made a protected disclosure as that term is defined in this section.

(Oct. 7, 1998, D.C. Law 12-160, § 202, 45 DCR 5147; Nov. 16, 2006, D.C. Law 16-187, § 201(a), 53 DCR 6722; Mar. 3, 2010, D.C. Law 18-111, § 2082(c), 57 DCR 181; Mar. 11, 2010, D.C. Law 18-117, § 3(a), 57 DCR 896.)

Prior Codifications. — 1981 Ed., § 1-1177.1.

Effect of amendments. — D.C. Law 16-187, in par. (3), deleted “or” from the end of subpar. (A), substituted “; or” for a period at the end of subpar. (B), and added subpar. (C); added par. (8A); and, in par. (9), substituted “District instrumentality, a District government contractor, or a person who or entity that employs security officers” for “District instrumentality or by a District government contractor”.

D.C. Law 18-111, in par. (5), substituted “Washington Convention and Sports Authority” for “Washington Convention Center Authority”.

D.C. Law 18-117 added par. (6A); and, in par. (10), substituted “an employee or contractor” for “an employee”.

Emergency legislation. — For temporary addition of subchapter V 1981 Ed., see §§ 202-208 of the Whistleblower Reinforcement Emergency Amendment Act of 1998 (D.C. Act 12-400, July 13, 1998, 45 DCR 5158), and see §§ 202-208 of the Whistleblower Reinforcement Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-464, October 28, 1998, 45 DCR 7821).

For temporary (90 day) amendment of section, see § 2082(c) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2082(c) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 12-160. — Law 12-160, the “Whistleblower Reinforcement Act

of 1998,” was introduced in Council and assigned Bill No. 12-191, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-398 and transmitted to both Houses of Congress for its review. D.C. Law 12-160 became effective on October 7, 1998.

Legislative history of Law 16-187. — Law 16-187, the “Enhanced Professional Security Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-102, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 25, 2006, it was assigned Act No. 16-465 and transmitted to both Houses of Congress for its review. D.C. Law 16-187 became effective on November 16, 2006.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 2-218.50.

Legislative history of Law 18-117. — Law 18-117, the “Whistleblower Protection Amendment Act of 2009”, was introduced in Council and assigned Bill No. 18-233, which was referred to the Committee on Government Operations and the Environment. The bill was adopted on first and second readings on December 1, 2009, and December 15, 2009, respectively. Signed by the Mayor on January 11, 2010, it was assigned Act No. 18-265 and transmitted to both Houses of Congress for its review. D.C. Law 18-117 became effective on March 11, 2010.

Short title. — Employees of District Contractors and Instrumentality Whistleblower Protection Act of 1998: Section 201 of Title II of D.C. Law 12-160 provided that Title II may be cited as the “Employees of District Contractors

and Instrumentality Whistleblower Protection Act of 1998.”

Editor’s notes. — For whistleblower protection for employees of contracts and instrumentalities, see § 2-223.01 et seq.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Protected disclosures.

Admissibility of evidence.

Forensic psychiatrist’s testimony as to training of former employee’s wife as medical records specialist, but that she worked at home as housewife rather than in her profession and took active role in employee’s medical treatment, was within psychiatrist’s area of expertise and admissible in employee’s retaliation suit, under False Claims Act (FCA) and District of Columbia law, claiming that he was terminated for complaining of discrimination based on race, color, gender, Syrian national origin, and Muslim religion, since testimony was all part of standard family history that any competent psychiatrist would gather in performing psychiatric assessment, and any cultural biases would be aired in cross-examination. *Kakeh v. United Planning Org., Inc.*, 587 F.Supp.2d 125, 2008 U.S. Dist. LEXIS 94261 (2008).

Forensic psychiatrist’s testimony to former employee’s untruthfulness during examination was admissible, in employee’s retaliation suit, under False Claims Act (FCA) and District of Columbia law, claiming that he was terminated for complaining of discrimination based on race, color, gender, Syrian national origin, and Muslim religion, since expert relied, with great specificity, on contradictions between what employee told expert and facts contained in voluminous medical records that expert studied. *Kakeh v. United Planning Org., Inc.*, 587 F.Supp.2d 125, 2008 U.S. Dist. LEXIS 94261 (2008).

Forensic psychiatrist’s testimony to former employee’s personnel file at prior place of employment was not relevant to rebut employee’s claim for emotional distress, precluding admission of testimony in employee’s retaliation suit, under False Claims Act (FCA) and District of Columbia law, claiming that he was terminated for complaining of discrimination based on race, color, gender, Syrian national origin, and Muslim religion, and seeking damages for emotional distress due to termination. *Kakeh v. United Planning Org., Inc.*, 587 F.Supp.2d 125, 2008 U.S. Dist. LEXIS 94261 (2008).

Forensic psychiatrist’s purely speculative and highly inflammatory testimony about former employee’s alleged extra-marital activities was inadmissible, in employee’s retaliation

suit, under False Claims Act (FCA) and District of Columbia law, claiming that he was terminated for complaining of discrimination based on race, color, gender, Syrian national origin, and Muslim religion. *Kakeh v. United Planning Org., Inc.*, 587 F.Supp.2d 125, 2008 U.S. Dist. LEXIS 94261 (2008).

Evidence of former employee’s work for non-profit organization funded by Libyan government and alleged work for Saudi royal family was relevant to employee’s Muslim religion and Syrian national origin, as required for admission in employee’s retaliation suit, under False Claims Act (FCA) and District of Columbia law, claiming that he was terminated for complaining of discrimination based on race, color, gender, national origin, and religion, since employee’s religion and ethnicity were integral elements of his discrimination case. *Kakeh v. United Planning Org., Inc.*, 587 F.Supp.2d 125, 2008 U.S. Dist. LEXIS 94261 (2008).

Evidence of former employee’s previous job performance and termination at prior company, on grounds that his management style was not conducive to building strong management team, was not relevant to employee’s alleged failure to mitigate his damages sought from more recent employer, precluding admission of evidence regarding prior termination in employee’s retaliation suit, under False Claims Act (FCA) and District of Columbia law, claiming that he was terminated by more recent employer for complaining of discrimination based on race, color, gender, Syrian national origin, and Muslim religion. *Kakeh v. United Planning Org., Inc.*, 587 F.Supp.2d 125, 2008 U.S. Dist. LEXIS 94261 (2008).

Probative value of testimony by former employee’s daughter, concerning employee’s arrest and detention for misdemeanor child abuse, due to striking daughter with bat and shaving her head for absences from school and home and not wearing traditional Muslim head covering, outweighed danger of unfair prejudice against employee, who was Muslim, regarding his relationships with women, as required for admission of testimony in employee’s retaliation suit, under False Claims Act (FCA) and District of Columbia law, claiming that he was terminated for complaining of discrimination based on race, color, gender, Syrian national origin, and religion, and seeking damages for emotional distress, since family difficulties were relevant to his emotional dis-

stress during unemployment. *Kakeh v. United Planning Org., Inc.*, 587 F.Supp.2d 125, 2008 U.S. Dist. LEXIS 94261 (2008).

Protected disclosures.

Genuine issue of material fact existed as to whether former employer was aware of any protected disclosures by former employee, pre-

cluding summary judgment for employer on employee's claims for violations of the District of Columbia Whistleblower Protection Act (WPA), and anti-retaliation provisions of the False Claims Act (FCA) and the District of Columbia False Claims Act. *Kakeh v. United Planning Org.*, 537 F.Supp.2d 65, 2008 U.S. Dist. LEXIS 14917 (2008).

§ 2-223.02. Prohibitions.

(a) A supervisor shall not threaten to take or take a prohibited personnel action or otherwise retaliate against an employee because of the employee's protected disclosure or because of an employee's refusal to comply with an illegal order.

(b) A District government official or employee having the responsibility to evaluate, award, authorize payments, terminate, or otherwise administer a contract for goods or services between the District government and a contractor shall not threaten to take or take a prohibited procurement action against a contractor, or a contractor competing for a contract, based wholly or in part on a protected disclosure made by an employee, officer, or owner of the contractor to a public body.

(Oct. 7, 1998, D.C. Law 12-160, § 203, 45 DCR 5147; Mar. 11, 2010, D.C. Law 18-117, § 3(b), 57 DCR 896.)

Prior Codifications. — 1981 Ed., § 1-1177.2.

Effect of amendments. — D.C. Law 18-117 rewrote the section, which had read as follows: "A supervisor shall not threaten to take or take a prohibited personnel action or otherwise retaliate against an employee because of the employee's protected disclosure or because of an employee's refusal to comply with an illegal order."

Emergency legislation. — For temporary addition of subchapter, see note to § 2-223.01.

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see Historical and Statutory Notes following § 2-223.01.

Legislative history of Law 18-117. — For Law 18-117, see notes following § 2-223.01.

CASE NOTES

Construction and application.

To prove that his former employer violated District of Columbia Whistleblower Protection Act (WPA), employee had to establish by a preponderance of the evidence that (1) he made a protected disclosure and/or refused to comply with an illegal order, (2) employer took an

adverse employment action against him, and (3) his disclosure and/or refusal to comply with an illegal order was a contributing factor to employer's decision to take the adverse employment action. *Kakeh v. United Planning Org., Inc.*, 655 F.Supp.2d 107, 2009 U.S. Dist. LEXIS 81964 (2009).

§ 2-223.03. Enforcement.

(a) An employee aggrieved by a violation of § 2-223.02 may bring a civil action before a court or a jury in the Superior Court of the District of Columbia seeking relief and damages, including but not limited to injunction, reinstatement to the same position held before the prohibited personnel action or to an equivalent position, and reinstatement of the employee's seniority rights, restoration of lost benefits, back pay and interest on back pay, compensatory

damages, reasonable costs, and attorney fees. A civil action shall be filed within 3 years after a violation occurs or within one year after the employee first becomes aware of the violation, whichever occurs first.

(a-1) A government contractor aggrieved by a violation of § 2-223.02(b) may bring a civil action before a court or a jury in the Superior Court of the District of Columbia seeking relief and damages, including an injunction, compensatory damages, reasonable costs, and attorney fees. A civil action shall be filed within 2 years after a violation occurs or within one year after the contractor first becomes aware of the violation, whichever occurs first.

(b) In a civil action or administrative proceeding, once it has been demonstrated by a preponderance of the evidence that an activity proscribed by § 2-223.02 was a contributing factor in the alleged prohibited personnel action against an employee, the burden of proof shall be on the employing District instrumentality or contractor, or the person or entity that employed the security officer, to prove by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by this section.

(c) Notwithstanding any other provision of law, a violation of § 2-223.02 constitutes a complete affirmative defense for a whistleblower to a prohibited personnel action in an administrative review, challenge, or adjudication of that action.

(d) An employee who prevails in a civil action at the trial level shall be granted the equitable relief provided in the decision effective upon the date of the decision, absent a stay.

(Oct. 7, 1998, D.C. Law 12-160, § 204, 45 DCR 5147; Nov. 16, 2006, D.C. Law 16-187, § 201(b), 53 DCR 6722; Mar. 11, 2010, D.C. Law 18-117, § 3(c), 57 DCR 896.)

Prior Codifications. — 1981 Ed., § 1-1177.3.

Effect of amendments. — D.C. Law 16-187, in subsec. (b), substituted “District instrumentality, a District government contractor, or a person who or entity that employs security officers” for “District instrumentality or by a District government contractor”.

D.C. Law 18-117, in subsec. (a), substituted “A civil action shall be filed within 3 years after a violation occurs or within one year after the employee first becomes aware of the violation, whichever occurs first” for “A civil action shall

be filed within 1 year after a violation occurs or within 1 year after the employee first becomes aware of the violation”; and added subsec. (a-1).

Emergency legislation. — For temporary addition of subchapter, see note to § 2-223.01.

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see Historical and Statutory Notes following § 2-223.01.

Legislative history of Law 16-187. — For Law 16-187, see notes following § 2-223.01.

Legislative history of Law 18-117. — For Law 18-117, see notes following § 2-223.01.

CASE NOTES

ANALYSIS

Transcripts.
Witness fees.

Transcripts.

Former employee of private nonprofit corporation that received funding from federal and District of Columbia governments was not en-

titled to recover costs of transcripts for depositions noticed by defendants as part of his costs in whistleblower action against employer alleging violations of False Claims Act (FCA), District of Columbia False Claims Act, and District of Columbia Whistleblower Protection Act (WPA), since transcripts were not used on record at any hearing or at trial. *Kakeh v. United*

Planning Org., 657 F.Supp.2d 15, 2009 U.S. Dist. LEXIS 87874 (2009).

Witness fees.

Former employee of private nonprofit corporation that received funding from federal and District of Columbia governments was not entitled to recover expert witness fees as part of

his costs in whistleblower action against employer alleging violations of False Claims Act (FCA), District of Columbia False Claims Act, and District of Columbia Whistleblower Protection Act (WPA), absent explicit authorization to recover fees in statutes. *Kakeh v. United Planning Org.*, 657 F.Supp.2d 15, 2009 U.S. Dist. LEXIS 87874 (2009).

§ 2-223.04. Disciplinary action; fine.

(a) As part of the relief ordered in an administrative, arbitral or judicial proceeding, a supervisor employed by a District instrumentality who is found to have violated § 2-223.02 shall be subject to appropriate disciplinary action, up to and including dismissal.

(b) As part of the relief ordered in a judicial proceeding, a supervisor employed by a District instrumentality who is found to have violated § 2-223.02 shall be subject to a civil fine not to exceed \$1000.

(Oct. 7, 1998, D.C. Law 12-160, § 205, 45 DCR 5147; Nov. 16, 2006, D.C. Law 16-187, § 201(c), 53 DCR 6722.)

Prior Codifications. — 1981 Ed., § 1-1177.4.

Effect of amendments. — D.C. Law 16-187 substituted “a supervisor employed by a District instrumentality” for “any supervisor” throughout the section.

Emergency legislation. — For temporary addition of subchapter, see note to § 2-223.01.

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see Historical and Statutory Notes following § 2-223.01.

Legislative history of Law 16-187. — For Law 16-187, see notes following § 2-223.01.

§ 2-223.05. Election of remedies.

(a) The institution of a civil action pursuant to § 2-223.03(a) shall preclude an employee from pursuing any administrative remedy for the same cause of action from an arbitrator pursuant to a negotiated grievance and arbitration procedure or an employment contract.

(b) No civil action shall be brought, pursuant to § 2-223.03(a) if the aggrieved employee has had a final determination on the same cause of action from an arbitrator pursuant to a negotiated grievance and arbitration procedure or an employment contract.

(Oct. 7, 1998, D.C. Law 12-160, § 206, 45 DCR 5147.)

Prior Codifications. — 1981 Ed., § 1-1177.5.

Emergency legislation. — For temporary addition of subchapter, see note to § 2-223.01.

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see Historical and Statutory Notes following § 2-223.01.

§ 2-223.06. Posting of notice.

District instrumentalities shall conspicuously display notices of employee protections and obligations under this subchapter in each personnel office and in other public places, and shall use all other appropriate means to keep all employees informed, including but not limited to the inclusion of annual

notices of employee protections and obligations under this subchapter with employee tax reporting documents. District government contractors shall inform all employees engaged in performing District government contracts of their rights under this subchapter. A person who or entity that employs security officers shall inform those employees of their rights under this subchapter.

(Oct. 7, 1998, D.C. Law 12-160, § 207, 45 DCR 5147; Nov. 16, 2006, D.C. Law 16-187, § 201(d), 53 DCR 6722.)

Prior Codifications. — 1981 Ed., § 1-1177.6.

Effect of amendments. — D.C. Law 16-187 added the sentence: “A person who or entity that employs security officers shall inform those employees of their rights under this subchapter.”

Emergency legislation. — For temporary addition of subchapter, see note to § 2-223.01.

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see Historical and Statutory Notes following § 2-223.01.

Legislative history of Law 16-187. — For Law 16-187, see notes following § 2-223.01.

§ 2-223.07. Applicability.

(a) This subchapter shall apply to actions taken after July 13, 1998.

(b) This subchapter shall apply to employees of the WMATA when the Commonwealth of Virginia and the State of Maryland enact similar provisions for WMATA whistleblowers.

(Oct. 7, 1998, D.C. Law 12-160, § 208, 45 DCR 5147.)

Prior Codifications. — 1981 Ed., § 1-1177.7.

Emergency legislation. — For temporary addition of subchapter, see note to § 2-223.01.

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see Historical and Statutory Notes following § 2-223.01.

Subchapter XIII. Repealed and Expired Provisions.

PART A.

GENERAL.

§ 2-225.01. Right of Mayor to contract. [Repealed].

Repealed.

(June 11, 1878, 20 Stat. 103, ch. 180, § 3; Feb. 21, 1986, D.C. Law 6-85, § 1103(b), 32 DCR 7396.)

Prior Codifications. — 1981 Ed., § 1-1101. 1973 Ed., § 1-801.

Legislative history of Law 6-85. — Law 6-85 was introduced in Council and assigned Bill No. 6-191, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on November 5, 1985 and November 19, 1985, respectively. Signed by the Mayor on December 3, 1985, it was assigned Act No. 6-110 and transmitted to both Houses of Congress for its review.

§ 2-225.02. Contracts in which Mayor personally interested to be void. [Repealed].

Repealed.

(R.S., D.C., § 82; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2; Feb. 21, 1986, D.C. Law 6-85, § 1103(j), 32 DCR 7396.)

Prior Codifications. — 1981 Ed., § 1-1102. legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-225.01.
1973 Ed., § 1-802.

Legislative history of Law 6-85. — For

§ 2-225.03. Contract requirements. [Repealed].

Repealed.

(R.S., D.C., § 80; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2; Feb. 21, 1986, D.C. Law 6-85, § 1103(j), 32 DCR 7396.)

Prior Codifications. — 1981 Ed., § 1-1103. legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-225.01.
1973 Ed., § 1-803.

Legislative history of Law 6-85. — For

§ 2-225.04. Formal contracts with bond not required for contracts less than \$2,000. [Repealed].

Repealed.

(June 26, 1912, 37 Stat. 168, ch. 182; Aug. 3, 1968, 82 Stat. 629, Pub. L. 90-455, § 4; Feb. 21, 1986, D.C. Law 6-85, § 1103(e), 32 DCR 7396.)

Prior Codifications. — 1981 Ed., § 1-1108. legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-225.01.
1973 Ed., § 1-806.

Legislative history of Law 6-85. — For

§ 2-225.05. Advertisement for purchases and contracts required; exceptions. [Repealed].

Repealed.

(R.S. § 3709; Aug. 2, 1946, 60 Stat. 809, ch. 744, § 9(a); June 30, 1949, 63 Stat. 403, ch. 288, title VI, § 602(f); Sept. 5, 1950, 64 Stat. 583, ch. 849, §§ 6(a), (b), 8(c); Aug. 28, 1958, 72 Stat. 967, Pub. L. 93-356, § 1; Mar. 29, 1977, D.C. Law 1-95, § 11(c), 23 DCR 9532b; April 12, 1997, D.C. Law 11-259, § 405, 44 DCR 1423.)

Prior Codifications. — 1981 Ed., § 1-1110. torical and Statutory Notes following § 2-213.02.
Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see His-

§ 2-225.06. Cost of advertising. [Repealed].

Repealed.

(May 30, 1908, 35 Stat. 493, ch. 227; Feb. 21, 1986, D.C. Law 6-85, § 1103(f), 32 DCR 7396.)

Prior Codifications. — 1981 Ed., § 1-1111. legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-225.01.
1973 Ed., § 1-809.

Legislative history of Law 6-85. — For

§ 2-225.07. Appropriations for advertising and publication of notices. [Repealed].

Repealed.

(Oct. 26, 1973, 87 Stat. 509, Pub. L. 93-140, § 25 (d); Feb. 21, 1986, D.C. Law 6-85, § 1103(a), 32 DCR 7396.)

Prior Codifications. — 1981 Ed., § 1-1112. legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-225.01.
1973 Ed., § 1-809a.

Legislative history of Law 6-85. — For

§ 2-225.08. Separate contracts for material and labor. [Repealed].

Repealed.

(July 5, 1884, 23 Stat. 125, ch. 227; Feb. 21, 1986, D.C. Law 6-85, § 1103(i), 32 DCR 7396.)

Prior Codifications. — 1981 Ed., § 1-1113. legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-225.01.
1973 Ed., § 1-810.

Legislative history of Law 6-85. — For

§ 2-225.09. Operation of District Quarry. [Repealed].

Repealed.

(Mar. 3, 1905, 33 Stat. 892, ch. 1406; April 12, 1997, D.C. Law 11-259, § 406, 44 DCR 1423.)

Prior Codifications. — 1981 Ed., § 1-1114. legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-213.02.
1973 Ed., § 1-811.

Legislative history of Law 11-259. — For

§ 2-225.10. Purchasing sites for schools and public buildings; use of agents; enlargement of school buildings. [Repealed].

Repealed.

(Mar. 2, 1889, 25 Stat. 802, ch. 370; June 6, 1900, 31 Stat. 568, ch. 789; Feb. 21, 1986, D.C. Law 6-85, §§ 1103(g), (h).)

Prior Codifications. — 1981 Ed., § 1-1115. legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-225.01.
1973 Ed., § 1-812.
Legislative history of Law 6-85. — For

§ 2-225.11. Testing of building materials by Bureau of Standards. [Repealed].

Repealed.

(Mar. 4, 1913, 37 Stat. 945, ch. 150; Feb. 21, 1986, D.C. Law 6-85, § 1103(d), 32 DCR 7396.)

Prior Codifications. — 1981 Ed., § 1-1116. legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-225.01.
1973 Ed., § 1-813.
Legislative history of Law 6-85. — For

§ 2-225.12. Authorization to test materials in laboratory of Department of Transportation. [Repealed].

Repealed.

(June 29, 1932, 47 Stat. 354, ch. 308; Feb. 21, 1986, D.C. Law 6-85, § 1103(c), 32 DCR 7396.)

Prior Codifications. — 1981 Ed., § 1-1117. **Transfer of Functions.** — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.
1973 Ed., § 1-814.
Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-225.01.

§ 2-225.13. Sludge removal. [Repealed].

Repealed.

(Mar. 24, 1950, 64 Stat. 35, ch. 74, § 1; April 12, 1997, D.C. Law 11-259, § 407, 44 DCR 1423.)

Prior Codifications. — 1981 Ed., § 1-1121. legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-213.02.
1973 Ed., § 1-817a.
Legislative history of Law 11-259. — For

§ 2-225.14. Auction of property unfit for service; proceeds. [Repealed].

Repealed.

(Mar. 3, 1883, 22 Stat. 470, ch. 95, § 1; April 12, 1997, D.C. Law 11-259, § 408, 44 DCR 1423.)

Prior Codifications. — 1981 Ed., § 1-1123. legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-213.02.
1973 Ed., § 1-818.
Legislative history of Law 11-259. — For

§ 2-225.15. Exchange of equipment in payment for new equipment. [Repealed].

Repealed.

(June 26, 1912, 37 Stat. 147, ch. 182; April 12, 1997, D.C. Law 11-259, § 409, 44 DCR 1423.)

Prior Codifications. — 1981 Ed., § 1-1124. legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-213.02.
1973 Ed., § 1-819.
Legislative history of Law 11-259. — For

§ 2-225.16. Contracts for inspection, maintenance and repair of fixed equipment. [Repealed].

Repealed.

(Oct. 12, 1968, 82 Stat. 1004, Pub. L. 90-573, § 1; April 12, 1997, D.C. Law 11-259, § 410, 44 DCR 1423.)

Prior Codifications. — 1981 Ed., § 1-1129. legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-213.02.
1973 Ed., § 1-824.
Legislative history of Law 11-259. — For

PART B.

EQUAL OPPORTUNITY FOR LOCAL, SMALL, AND DISADVANTAGED BUSINESS ENTERPRISES.

§§ 2-225.21 to 2-225.27. Findings; Definitions; District government contracting with local business enterprises; quarterly agency reports on contracts; Council review of goals; Assistance Programs for local business enterprise contractors, disadvantaged business enterprise contractors, and small business enterprise contractors; Certificate of registration; functions of the Commission; rules and regulations by Mayor [Expired].

Expired.

(Mar. 17, 1993, D.C. Law 9-217, §§ 2 to 8, 42 DCR 2209.)

Prior Codifications. — 1981 Ed., §§ 1-1152 to 1-1152.6. prizes Act of 1992 (D.C. Law 9-217, March 17, 1993, law notification 40 DCR 143).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Amendment Act of 1996

(D.C. Law 11-114, May 1, 1996, law notification 43 DCR 2594).

For temporary (225 day) amendment of section, see §§ 2 to 8 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Act of 1996 (D.C. Law 11-267, May 8, 1997, law notification 44 DCR 2986).

For temporary (225 day) amendment of section, see §§ 2 to 8 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Act of 1998 (D.C. Law 12-102, April 30, 1998, law notification 45 DCR 2793).

Temporary Addition of Section. — For temporary (225 day) addition of sections, see §§ 2 to 8 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Temporary Act of 1992 (D.C. Law 9-152, September 15, 1992, law notification 39 DCR 5023).

Emergency legislation. — For temporary reenactment and amendment, on an emergency

basis, of the provisions of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1992, see §§ 2-8 of the Equal opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Act of 1997 (D.C. Act 12-65, April 3, 1997, 44 DCR 2437), and see §§ 2-8 of the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Congressional Review Emergency Act of 1998 (D.C. Act 12-347, May 6, 1998, 45 DCR 2988).

Legislative history of Law 9-217. — Law 9-217, the “Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 1992” was approved on December 29, 1992, assigned Act. No. 9-347 and transmitted to both Houses of Congress for its review. D.C. Law 9-218 became law on March 17, 1993.

Expiration of Law 9-217. — Section 9(b) of D.C. Law 9-217 provided that the act shall expire 2 years from the date of its taking effect. D.C. Law 9-217 became effective on March 17, 1993.

CHAPTER 3. PROCUREMENT [REPEALED].

UNIT A. PROCUREMENT PRACTICES FOR THE DISTRICT
GOVERNMENT

Subchapter I. General

Sec.

2-301.01 to 2-301.07. [Repealed].

Subchapter II. Procurement Organization

2-302.01 to 2-302.07. [Repealed].

2-302.08. [Transferred].

*Subchapter III. Source Selection and Contract
Formation*

2-303.01 to 2-303.23. [Repealed].

Subchapter IV. Specifications

2-304.01, 2-304.02. [Repealed].

*Subchapter V. Bonds and Construction
Procurement*

2-305.01 to 2-305.08. [Repealed].

Subchapter VI. Cost Principles

2-306.01. [Repealed].

Subchapter VII. Supply Management

2-307.01 to 2-307.03. [Repealed].

*Subchapter VIII. Administrative and Civil
Remedies*

PART A

General Provisions

2-308.01 to 2-308.06. [Repealed].

PART B

Procurement Related Claims.

2-308.07 to 2-308.12. [Repealed].

Subchapter IX. Contract Appeals Board

2-309.01 to 2-309.08. [Repealed].

Subchapter X. Ethics in Public Contracting

Sec.

2-310.01. [Repealed].

*Subchapter X-A. South Africa Contracting
Sanctions*

2-310.01a to 2-310.01f. [Repealed].

Subchapter XI. Miscellaneous

2-311.01 to 2-311.03. [Repealed].

PART XII

Electronic Commerce; Acquisition and
Disposition

2-312.01. Electronic transactions. [Trans-
ferred].

2-312.02. Electronic procurement. [Trans-
ferred].

2-312.03. Electronic auctions. [Transferred].

UNIT B. GENERAL

*Subchapter I. Deadline for Appointment of
Inspector General*

2-321.01. [Transferred].

*Subchapter II. Year 2000 District Government
Computer Liability Immunity*

2-323.01, 2-323.02. [Transferred].

Subchapter III. Miscellaneous

2-325.01. to 2-325.03. [Transferred].

2-325.04, 2-325.05. [Repealed].

*Subchapter IV. Repealed and Expired
Provisions*

2-327.01. [Repealed].

2-327.02. [Expired].

2-327.03. [Expired].

Unit A. Procurement Practices for the District Government.

Subchapter I. General.

§ 2-301.01. Purposes, rules of construction. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 101, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(a), 44 DCR 14233; Apr. 12, 2000, D.C. Law 13-91, § 119(a), 47 DCR 520; June 8, 2006, D.C. Law 16-122, § 2(a), 53 DCR 2834; Mar. 25, 2009,

D.C. Law 17-353, § 106(a), 56 DCR 1117; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1181.1.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the District of Columbia Government Purchase Card Program Reporting Requirements Temporary Amendment Act of 2004 (D.C. Law 15-253, March 17, 2005, law notification 52 DCR 4129).

For temporary (225 day) amendment of D.C. Law 16-86, see § 2 of the Contracting and Procurement Reform Task Force Membership Authorization and Qualifications Clarification Temporary Act of 2006 (D.C. Law 16-120, June 8, 2006, law notification 53 DCR 5358).

Temporary Addition of Section. — For temporary (225 day) additions, see § 2 to 8 of the Contracting and Procurement Reform Task Force Establishment Temporary Act of 2006 (D.C. Law 16-86, April 4, 2006, law notification 53 DCR 3345).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of the Advisory Neighborhood Commission Procurement Exclusion Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-497, December 18, 2000, 48 DCR 78).

For temporary (90 day) addition, see §§ 2 to 8 of Contracting and Procurement Reform Task Force Establishment Emergency Act of 2005 (D.C. Act 16-245, December 22, 2005, 53 DCR 271).

For temporary (90 day) amendment of additions, see §§ 2 and 3 of Contracting and Procurement Reform Task Force Membership Authorization and Qualifications Clarification Emergency Amendment Act of 2006 (D.C. Act 16-299, February 27, 2006, 53 DCR 1879).

For temporary (90 day) addition, see §§ 2 to 8 of Contracting and Procurement Reform Task Force Establishment Congressional Review Emergency Act of 2006 (D.C. Act 16-331, March 23, 2006, 53 DCR 2591).

For temporary (90 day) amendment of D.C. Law 16-120, see § 2 of Contracting and Procurement Reform Task Force Membership Authorization and Qualifications Clarification Congressional Review Emergency Act of 2006 (D.C. Act 16-406, June 26, 2006, 2006, 53 DCR 5424).

For temporary (90 day) enactment, see §§ 2 to 6 of District of Columbia Contracting and Procurement Reform Task Force Establishment Extension Emergency Act of 2006 (D.C. Act 16-531, December 4, 2006, 53 DCR 9838).

Legislative history of Law 6-85. — Law 6-85, the “District of Columbia Procurement Practices Act of 1985,” was introduced in Council and assigned Bill No. 6-191, which was

referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 5, 1985 and November 19, 1985, respectively. Signed by the Mayor on December 3, 1985, it was assigned Act No. 6-110 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-259. — Law 11-259, the “Procurement Reform Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-705, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 9, 1997.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 2-201.01.

Legislative history of Law 16-122. — Law 16-122, the “Procurement Practices Timely Competition Assurance and Direct Voucher Prohibition Amendment Act of 2006,” was introduced in Council and assigned Bill No. 16-112 which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 7, 2006, and March 7, 2006, respectively. Signed by the Mayor on March 30, 2006, it was assigned Act No. 16-339 and transmitted to both Houses of Congress for its review. D.C. Law 16-122 became effective on June

Delegation of Authority. — Contracting authority for Year 2000 remediation contracts, see Mayor’s Order 99-54, March 5, 1999 (46 DCR 2831).

Mayor’s Orders. — Limitation of contracting authority for D.C. government offices, departments and agencies: See Mayor’s Order 85-110, July 9, 1985.

Emergency procurement to provide temporary housing for homeless families in the District of Columbia: See Mayor’s Order 90-199, December 13, 1990.

Requirement That All Agencies Prepare an Annual Service Level Agreement (Acquisition Planning Document), see Mayor’s Order 2001-88, June 18, 2001 (48 DCR 5978).

Editor’s notes. — Compliance with equal opportunity obligations in contracts: See Mayor’s Order 85-85, June 10, 1985.

Demolition and development of the Oyster School building: Section 6(b) of D.C. Law 12-174 authorized the Board of Education to enter into a Development Agreement with a Developer and any other agreement necessary to

carry out the purposes of the act, notwithstanding the provisions of this section.

§ 2-301.02. Supplementary general principles of law applicable. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 102, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1181.2.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-301.03. Obligation of good faith. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 103, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1181.3.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-301.04. Application of chapter. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 104, 32 DCR 7396; Mar. 8, 1991, D.C. Law 8-258, § 2(a), 38 DCR 974; Mar. 19, 1994, D.C. Law 10-79, § 2(a), 40 DCR 8696; May 8, 1996, 1996, D.C. Law 11-117, § 18(a), 43 DCR 1179; Apr. 12, 1997, D.C. Law 11-259, § 101(b), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 2(a), 45 DCR 1687; Oct. 19, 2000, D.C. Law 13-172, § 702, 47 DCR 6308; Apr. 3, 2001, D.C. Law 13-228, § 2, 48 DCR 567; Apr. 13, 2005, D.C. Law 15-350, § 201, 52 DCR 2005; June 12, 2007, D.C. Law 17-9, § 1002(a), 54 DCR 4102; Oct. 16, 2006, 120 Stat. 2037, Pub. L. 109-356, § 203(b)(1); Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1181.4.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(a) of the Procurement Reform Temporary Amendment Act of 1997 (D.C. Law 12-17, Sep. 12, 1997, law notification 44 DCR 5459)

For temporary (225 day) amendment of the School Safety and Security Contracting Procedures Temporary Amendment Act of 2004 (D.C. Law 15-318, April 8, 2005, law notification 52 DCR 4707).

Emergency legislation. — For temporary amendment of section, see §§ 3(a) and (e) of the Procurement Reform Emergency Amendment Act of 1997 (D.C. Act 12-62, April 15, 1997, 44 DCR 2413), and §§ 3(a) and (e) of the Procurement Reform Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-133, August 12, 1997, 44 DCR 4832).

For temporary amendment of section, see § 2(a) of the Procurement Reform Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338).

For temporary (90-day) amendment of section, see § 2 of the Advisory Neighborhood Commission Procurement Exclusion Emergency Amendment Act of 1999 (D.C. Act 13-150, December 1, 1999, 46 DCR 10393).

For temporary (90-day) amendment of section, see § 2 of the Advisory Neighborhood Commission Procurement Exclusion Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-316, April 17, 2000, 47 DCR 2875).

For temporary (90-day) amendment of section, see § 702 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 702 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 2 of Advisory Neighborhood Commission Procurement Exclusion Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-12, March 2, 2001, 48 DCR 2498).

For temporary (90 day) amendment of section, see § 9 of Metropolitan Police Department School Safety and Security Emergency Act of 2004 (D.C. Act 15-496, August 2, 2004, 51 DCR 8797).

For temporary (90 day) amendment of section, see § 8 of School Safety and Security Contracting Procedures Emergency Act of 2004 (D.C. Act 15-596, November 30, 2004, 51 DCR 11219).

For temporary (90 day) amendment of section, see §§ 2(b), 3 of School Security Authority Extension Emergency Amendment Act of 2004 (D.C. Act 15-728, January 13, 2005, 52 DCR 1954).

For temporary (90 day) amendment of section, see § 8 of School Safety and Security Contracting Procedures Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-3, January 19, 2005, 52 DCR 2675).

For temporary (90 day) amendment of section, see § 2 of MPD CCTV Procurement Exemption Emergency Amendment Act of 2007 (D.C. Act 17-15, February 20, 2007, 54 DCR 1772).

Legislative history of Law 8-258. — Law 8-258 was introduced in Council and assigned Bill No. 8-643, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-343 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-117. — Law 11-117, the "Prison Industries Act of 1996," was introduced in Council and assigned Bill No.

11-151, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1996, and February 6, 1996, respectively. Signed by the Mayor on February 26, 1996, it was assigned Act No. 11-221 and transmitted to both Houses of Congress for its review. D.C. Law 11-117 became effective on May 8, 1996.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 12-104. — Law 12-104, the "Procurement Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-363, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on February 3, 1998, it was assigned Act No. 12-280 and transmitted to both Houses of Congress for its review. D.C. Law 12-104 became effective on May 8, 1998.

Legislative history of Law 13-172. — Law 13-172, the "Fiscal Year 2001 Budget Support Act of 2000," was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 13-228. — Law 13-228, the "Advisory Neighborhood Commission Procurement Exclusion Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-406, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-504 and transmitted to Both Houses of Congress for its review. D.C. Law 13-228 became effective on April 3, 2001.

Legislative history of Law 15-350. — Law 15-350, the "School Safety and Security Contracting Procedures Act of 2004," was introduced in Council and assigned Bill No. 15-725 which was referred to the Committee on Judiciary and the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on July 13, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-745 and transmitted to both Houses of Congress for its review. D.C. Law 15-350 became effective on April 13, 2005.

Legislative history of Law 17-9. — Law 17-9, the "Public Education Reform Amend-

ment Act of 2007", was introduced in Council and assigned Bill No. 17-1, which was referred to Committee of the Whole. The Bill was adopted on first and second readings on April 3, 2007, and April 19, 2007, respectively. Signed by the Mayor on April 23, 2007, it was assigned Act No. 17-38 and transmitted to both Houses of Congress for its review. D.C. Law 17-9 became effective on June 12, 2007.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Effective date. — Section 203(c) of Pub. L. 109-356, as amended by Pub. L. 110-5, § 21073(h), provided: "This section and the amendments made by this section shall take effect October 16, 2007."

Editor's notes. — Sections 2, 3 and 5 of D.C. Law 18-368 provided:

"Sec. 2. Definitions.

"For the purposes of this act, the term:

"(1) 'Deed Transfer and Recordation Taxes' means the revenue resulting from the imposition of the taxes under section 303 of the District of Columbia Deed Recordation Tax Act of 1962, approved March 2, 1962 (76 Stat. 11; D.C. Official Code § 42-1103), and section 47-903 of the District of Columbia Official Code.

"(2) 'Developer' means Eastbanc-W.D.C. Partners, LLC., its successors, affiliates, and assigns, either collectively or individually.

"(3) 'District Property' means the West End Library Property, Special Operations/MPD Building Property, and the West End Fire Station Property, as defined in paragraph (9) of this section.

"(4) 'Fund' means the West End Library and Fire Station Maintenance Fund established by section 4.

"(5) 'Fund Managers' means the Chief Librarian of the District of Columbia Public Library and the Mayor.

"(6) 'LDDA' means the Land Development and Disposition Agreement between the District and the Developer pursuant to the West End Parcels Disposition Approval Resolution of 2010, effective July 13, 2010 (Res.18-553; 57 DCR 7623).

"(7) 'Maintenance Agreement' means a West End Library and Fire Station Maintenance Agreement by and among the Fund Managers, and Developer, or its successors, or assigns, and established pursuant to section 5.

"(8) 'Project' means the acquisition, development, construction, installation, and equipping of the multi-use project to be located on the Property, to include:

"(A) A new library, estimated to contain approximately 20,000 gross square feet;

"(B) A new fire station, estimated to contain approximately 16,000 gross square feet;

"(C) A residential building on Square 37 estimated to contain approximately 224,390 gross square feet with approximately 153 units;

"(D) A residential rental building, including affordable housing units in Square 50, subject to public financial assistance;

"(E) Retail space estimated to contain approximately 9,600 gross square feet; and

"(F) Below-grade parking.

"(9) 'Property' means the following parcels of land located in Squares 37 and 50 in the District:

"(A) Square 37, Lot 836 ('West End Library Property');

"(B) Square 37, Lot 837 ('Special Operations/MPD Building Property');

"(C) Square 37, Lot 855 ('Developer Property');

"(D) Square 50, Lot 822 ('West End Fire Station Property'); and

"(E) Related air rights parcels.

"(10) 'West End Fire Station' means a new fire station in Square 50 in the West End to be constructed by the Developer pursuant to the LDDA.

"(11) 'West End Library' means a new neighborhood branch library to be constructed in Square 37 in the West End by the Developer pursuant to the LDDA.

"Sec. 3. Authorization.

"(a) Notwithstanding any statutory and regulatory process established regarding contracting and procurement, the District of Columbia Board of Library Trustees is authorized to procure the services of Developer for the design, development, and construction of that portion of the Project to include the West End Library, subject to a cost cap as established pursuant to agreement between the District and Developer.

"(b) Notwithstanding any statutory regulatory process established regarding contracting and procurement, the Mayor is authorized to procure the services of Developer for the design, development, and construction of that portion of the Project to include the West End Fire Station, subject to a cost cap as established pursuant to agreement between the District and Developer.

"(c)(1) The District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 et seq.), and the Procurement Practices Reform Act of 2010, passed on 2nd reading on December 7, 2010 (Enrolled version of Bill 18-610), shall not apply to the procurement authorized under subsections (a) and (b) of this subsection.

"(2) The regulations set forth in Chapter 43 of Title 19 and Title 27 of the District of Columbia Municipal Regulations shall not apply to the procurement authorized under subsections (a) and (b) of this subsection."

"Sec. 5. West End Library and Fire Station Maintenance Agreement.

“(a) Notwithstanding any other provision of law, the Mayor and the Board of Library Trustees are authorized to enter into a maintenance agreement with a contractor to provide supplemental maintenance services to the West End Library and West End Fire Station in order to:

“(1) Maintain the cleanliness and operability of the exterior facade of the West End Fire Station and West End Library to at least the same standards as the larger buildings of which they are a part;

“(2) Maintain the cleanliness and operability of the interior of the West End Fire Station and West End Library, including lighting, window coverings, floors and floor coverings, bathrooms and other public spaces, FF&E, and the HVAC systems to at least the same standards as the larger buildings of which they are a part; (3) Pay for supplemental external building and grounds maintenance;

“(4) Pay for property, casualty, and liability

insurance (premiums and deductibles) attributable to the new library and fire station components of the Project (including common elements); and

“(5) Provide a capital replacement reserve for the new library and the new fire station as determined to be needed by the Chief Librarian of the District of Columbia Public Library and the Mayor.

“(b)(1) The District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 et seq.), and the Procurement Practices Reform Act of 2010, passed on 2nd reading on December 7, 2010 (Enrolled version of Bill 18-610), shall not apply to the Maintenance Agreement.

“(2) The regulations set forth in Chapter 43 of Title 19 and Title 27 of the District of Columbia Municipal Regulations shall not apply to the Maintenance Agreement.”

§ 2-301.05. Office of Contracting and Procurement; authority. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 105, 32 DCR 7396; Mar. 8, 1991, D.C. Law 8-258, § 2(b), 38 DCR 974; Apr. 12, 1997, D.C. Law 11-259, § 101(c), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 2(b), 45 DCR 1687; Mar. 26, 1999, D.C. Law 12-175, § 402(a), 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-264, § 8, 46 DCR 2118; June 19, 2001, D.C. Law 13-313, § 4(a), 48 DCR 1873; Apr. 4, 2003, D.C. Law 14-281, § 2, 50 DCR 893; Mar. 13, 2004, D.C. Law 15-105, § 102(a), 51 DCR 881; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1181.5.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(b) of the Procurement Reform Temporary Amendment Act of 1997 (D.C. Law 12-17, September 12, 1997, law notification 44 DCR 5459)

For temporary (225 day) amendment of section, see §§ 2 through 4 of the Vendor Payment and Drug Abuse, Alcohol Abuse, and Mental Illness Coverage Temporary Act of 1998 (D.C. Law 12-181, March 26, 1999, law notification 46 DCR 3407).

For temporary (225 day) amendment of section, see § 2 of the Chief Technology Officer Year 2000 Remediation Procurement Authority Temporary Amendment Act of 1999 (D.C. Law 13-17, July 17 1999, law notification 46 DCR 6314).

For temporary (225 day) amendment of section, see § 2 of the Vendor Payment Authorization Temporary Amendment Act of 2002 (D.C. Law 14-130, May 2, 2002, law notification 49 DCR 4405).

For temporary (225 day) amendment of section, see § 2 of the Procurement Practices Vendor Payment Revised Approval Authorization Temporary Amendment Act of 2003 (D.C. Law 15-100, March 10, 2004, law notification 51 DCR 3620).

Emergency legislation. — Provision for payment of vendors: For temporary allowance of the District of Columbia government to receive and pay valid claims for certain vendors who provided goods and services to the Department of Human Services from October 1, 1994, through July 31, 1995, without benefit of a valid written contract, see §§ 2 to 6 of the Vendor Payment Emergency Act of 1995 (D.C. Act 11-84, June 30, 1995, 42 DCR 3567).

For temporary provisions allowing the District to receive and pay valid claims for certain vendors who provided goods and services to certain District agencies between October 1, 1994 and July 31, 1995, without benefit of a valid written contract, see §§ 2 to 6 of the Equitable Relief for Vendors Emergency Act of 1995 (D.C. Act 11-121, July 27, 1995, 42 DCR 4115).

For temporary allowance of the District government to receive and pay valid claims of certain persons and vendors who provided goods and services to J.B. Johnson Nursing Center November 20, 1995, through November 29, 1995, without the benefit of a valid written contract with the District government, see §§ 2 to 6 of the Equitable Relief for Certain Persons and Vendors of J.B. Johnson Nursing Center Emergency Act of 1996 (D.C. Act 11-186, January 25, 1996, 43 DCR 382). For temporary allowance, on an emergency basis, of the District of Columbia government to receive and pay valid claims for certain vendors who provided goods or services to the Department of Human Services without benefit of a valid written contract, see §§ 2-7 of the Vendor Payment Emergency Act of 1996 (D.C. Act 11-491, January 13, 1997, 44 DCR 754). For temporary allowance, on an emergency basis, of the District of Columbia government to receive and pay valid claims for certain vendors who provided goods or services to the District without benefit of a valid written purchase order or contract, see §§ 2-4 of the Vendor Payment and Drug Abuse, Alcohol Abuse, and Mental Illness Coverage Emergency Amendment Act of 1998 (D.C. Act 12-396, September 16, 1998, 45 DCR 6952). For temporary authorization for the District of Columbia Public Library to pay outstanding invoices, see §§ 2 and 3 of the District of Columbia Public Library Vendor Payment Emergency Amendment Act of 1997 (D.C. Act 12-102, July 2, 1997, 44 DCR 4197). For temporary authorization for the District of Columbia Public Library to pay outstanding invoices for goods and services procured during Fiscal Year 1996 through March 1, 1997, but not received until after March 1, 1997, for which the required purchase orders have not been entered into the Financial Management System, see §§ 2-4a of the Public Library Vendor Payment Extension Emergency Act of 1997 (D.C. Act 12-157, October 16, 1997, 44 DCR 6046). For temporary amendment of section, see § 3(b) of the Procurement Reform Emergency Amendment Act of 1997 (D.C. Act 12-62, April 15, 1997, 44 DCR 2413), and § 3(b) of the Procurement Reform Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-133, August 12, 1997, 44 DCR 4832). For temporary amendment of section, see § 202(a) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794) and § 202(a) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669). For temporary amendment of section, see § 2(b) of the Procurement Reform Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338). For temporary (90-day) amendment of section, see § 202(a) of

the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446). For temporary (90 day) amendment of section, see § 2 of Vendor Payment Authorization Emergency Amendment Act of 2002 (D.C. Act 14-242, January 28, 2002, 49 DCR 1028). For temporary (90 day) amendment of section, see § 2 of Procurement Practices Vendor Payment Revised Approval Authorization Emergency Amendment Act of 2003 (D.C. Act 15-236, November 25, 2003, 50 DCR 10905). For temporary (90 day) amendment of section, see § 2 of Procurement Practices Vendor Payment Revised Approval Authorization Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-377, February 19, 2004, 51 DCR 2639). For temporary (90 day) authorization of payment, see § 2 of Hawk One Security, Inc. Payment Authorization Emergency Amendment Act of 2008 (D.C. Act 17-363, May 5, 2008, 55 DCR 5683).

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 8-258. — For legislative history of D.C. Law 8-258, see Historical and Statutory Notes following § 2-301.04.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 12-104. — For legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-301.04.

Legislative history of Law 12-175. — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 13-313. — Law 13-313, the "Technical Amendments Act of 2000," was introduced in Council and assigned Bill No. 13-879, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 19, 2001, it was assigned Act No. 13-574 and transmitted to Both Houses of Congress for its review. D.C. Law 13-313 became effective on June 19, 2001.

Legislative history of Law 14-281. — Law 14-281, the “Procurement Practices Vendor Payment Authorization Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-469, which was referred to Committee on Government Operations. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-615 and transmitted to both Houses of Congress for its review. D.C. Law 14-281 became effective on April 4, 2003.

Legislative history of Law 15-105. — Law 15-105, the “Technical Amendments Act of 2003”, was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Delegation of Authority. — Amendment of Mayor’s Order 86-44 Delegation of Contracting Authority, see Mayor’s Order 88-2, December 15, 1987.

Amendment of Mayor’s Order 86-45, Delegation of Small Purchase Authority, see Mayor’s Order 88-102, December 15, 1987.

Delegation of contracting authority, see Mayor’s Order 88-193, August 19, 1988; Mayor’s Order 88-273, December 30, 1988, as amended by Mayor’s Order 89-215, September 27, 1989 and Mayor’s Order 90-94, July 3, 1990; Mayor’s Order 90-178, November 19, 1990; Mayor’s Memorandum 89-46, November 29, 1989; Mayor’s Order 91-92, June 7, 1991; Mayor’s Order 92-153, December 1, 1992.

Amendment of Mayor’s Order 90-178, Delegation of contracting authority: See Mayor’s Order 95-45, March 23, 1995.

Delegation of contracting authority: See Mayor’s Order 95-168, December 7, 1995.

Amendment of Mayor’s Order 90-178, Delegation of Contracting Authority: See Mayor’s Order 96-83, June 20, 1996 (43 DCR 3510).

Amendment of Mayor’s Order 90-178, Delegation of Contracting Authority: See Mayor’s Order 96-136, September 9, 1996 (43

Mayor’s Orders. — Amendment of Mayor’s Order 96-172, Establishing Position of Administrator in the Commission on Mental Health Services; Appointment of Interim Administrator; Duties of Administrator: See Mayor’s Order 97-6, January 9, 1997 (44 DCR 357).

§ 2-301.05a. Criteria for Council review of multiyear contracts and contracts in excess of \$1 million. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 105a, as added Mar. 8, 1991, D.C. Law 8-257, § 3, 38 DCR 969; July 28, 1992, D.C. Law 9-136, § 2, 39 DCR 4083; May 16, 1995, D.C. Law 10-255, § 3, 41 DCR 5193; Apr. 27, 1999, D.C. Law 12-265, § 2, 46 DCR 2096; Oct. 20, 1999, D.C. Law 13-38, § 102, 46 DCR 6373; Apr. 12, 2000, D.C. Law 13-91, § 120, 47 DCR 520; Oct. 19, 2000, D.C. Law 13-172, § 102, 47 DCR 6308; Oct. 3, 2001, D.C. Law 14-28, § 2302, 48 DCR 6981; Oct. 1, 2002, D.C. Law 14-190, § 3504, 49 DCR 6968; June 5, 2003, D.C. Law 14-307, § 2202, 49 DCR 11664; Apr. 7, 2006, D.C. Law 16-91, § 130(a), 52 DCR 10637; Mar. 2, 2007, D.C. Law 16-191, § 119(a), 54 DCR 6794; Mar. 3, 2010, D.C. Law 18-111, §§ 1091, 1191, 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 1152, 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1181.5a.

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2 of Council Contract Approval Modification Temporary Amendment Act of 1995 (D.C. Law 11-88, February 13, 1996, law notification 43 DCR 1314).

For temporary (225 day) amendment of section, see § 2 of Council Contract Approval Modification Temporary Amendment Act of 1995 (D.C. Law 11-190, April 9, 1997, law notification 44 DCR 2385).

For temporary (225 day) amendment of section, see § 2 of Establishment of Council Contract Review Criteria Temporary Amendment Act of 1997 (D.C. Law 12-78, March 24, 1998, law notification 45 DCR 2113).

For temporary (225 day) amendment of section, see § 2 of the Chief Financial Officer Approval of Payment of Goods and Services Temporary Amendment Act of 2008 (D.C. Law 17-282, December 24, 2008, law notification 56 DCR 891).

Temporary Addition of Section. — For temporary (225 day) additions, see §§ 2 and 3 of the Unauthorized Contract Stop Payment Temporary Act of 2010 (D.C. Law 18-139, March 23, 2010, law notification 57 DCR 3378).

For temporary (225 day) addition, see § 1302 of the Fiscal Year 2010 Balanced Budget Support Temporary Act of 2010 (D.C. Law 18-222, September 24, 2010, law notification 57 DCR 9859).

For temporary (225 day) addition, see § 2 of the District Settlement Payment Integrity Temporary Act of 2010 (D.C. Law 18-277, December 7, 2010, law notification 57 DCR 12021).

Emergency legislation. — For temporary amendment of section, see § 2 of the Council Contract Approval Modification Temporary Amendment Act of 1995 Congressional Adjournment Emergency Act of 1997 (D.C. Act 12-7, March 3, 1997, 44 DCR 1621).

For temporary amendment of section, see § 2 of the Establishment of Council Contract Review Criteria Emergency Amendment Act of 1997 (D.C. Act 12-214, December 16, 1997, 44 DCR 1), and see § 2 of the Establishment of Council Contract Review Criteria Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-305, March 20, 1998, 45 DCR 2277).

For temporary amendment of section, see § 2 of the Chief Technology Officer Year 2000 Remediation Procurement Authority Emergency Amendment Act of 1999 (D.C. Act 13-38, March 22, 1999, 46 DCR 3015).

For temporary (90-day) amendment of section, see § 2 of the Chief Technology Officer Year 2000 Remediation Procurement Authority Emergency Amendment Act of 1999 (D.C. Act 13-38, March 22, 1999, 46 DCR 3015).

For temporary (90-day) amendment of section, see § 2 of the Advisory Neighborhood Commission Procurement Exclusion Emergency Amendment Act of 1999 (D.C. Act 13-47, December 1, 1999, 46 DCR 5481).

For temporary (90-day) amendment of section, see § 2 of the Chief Technology Officer

Year 2000 Remediation Procurement Authority Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-106, July 9, 1999, 46 DCR 6028).

For temporary (90-day) amendment of section, see § 102 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

For temporary (90-day) amendment of section, see § 102 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 102 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 46 DCR 8740).

For temporary (90 day) amendment of section, see § 2102 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 3404 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 2202 of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 2202 of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 2202 of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 2 of Council Review Extension Emergency Amendment Act of 2004 (D.C. Act 15-514, August 2, 2004, 51 DCR 8981).

For temporary (90 day) amendment, see § 2 of Chief Financial Officer Approval of Payment of Goods and Services Emergency Amendment Act of 2008 (D.C. Act 17-519, September 30, 2008, 55 DCR 11009).

For temporary (90 day) amendment of section, see § 1031 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) amendment of section, see §§ 1091, 1191 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see §§ 1091, 1191 of Fiscal Year Budget Support Congressional Review Emergency

Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) addition, see § 1302 of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) addition of section, see § 1302 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

For temporary (90 day) amendment of section, see § 1152 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 8-257. — Law 8-257 was introduced in Council and assigned Bill No. 8-645, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-342 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-55. — Law 9-55 was introduced in Council and assigned Bill No. 9-295. The Bill was adopted on first and second readings on September 17, 1991, and October 1, 1991, respectively. Vetoed by the Mayor on November 1, 1991, it was reenacted, following council's override of the Mayor's veto on November 5, 1991, and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-136. — Law 9-136, the "District of Columbia Procurement Practices Act of 1985 Council Contract Approval Procedures Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-312, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Vetoed by the Mayor on May 22, 1992, and overridden by Council on June 2, 1992, it was assigned Act No. 9-222 and transmitted to both Houses of Congress for its review. D.C. Law 9-136 became effective on July 28, 1992.

Legislative history of Law 10-255. — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective on May 16, 1995.

Legislative history of Law 12-265. — Law 12-265, the "Establishment of Council Contract Review Criteria, Alley Closing, Budget Support, and Omnibus Regulatory Reform Amend-

ment Act of 1998," was introduced in Council and assigned Bill No. 12-144. The Bill was adopted on first and second readings on April 7, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-397 and transmitted to both Houses of Congress for its review. D.C. Law 12-265 became effective on April 27, 1999.

Legislative history of Law 13-38. — Law 13-38, the "Service Improvement and Fiscal Year 2000 Budget Support Act of 1999," was introduced in Council and assigned Bill No. 13-161, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 11, 1999, and June 22, 1999, respectively. Signed by the Mayor on July 8, 1999, it was assigned Act No. 13-111 and transmitted to both Houses of Congress for its review. D.C. Law 13-38 became effective on October 20, 1999.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 2-201.01.

Legislative history of Law 13-172. — For Law 13-172, see notes following § 2-301.04.

Legislative history of Law 14-28. — Law 14-28, the "Fiscal Year 2002 Budget Support Act of 2001," was introduced in Council and assigned Bill No. 14-144, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

Legislative history of Law 14-190. — Law 14-190, the "Fiscal Year 2003 Budget Support Act of 2002," was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

Legislative history of Law 14-307. — Law 14-307, the "Fiscal Year 2003 Budget Support Amendment Act of 2002," was introduced in Council and assigned Bill No. 14-892, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on October 1, 2002, and November 7, 2002, respectively. Signed by the Mayor on December 4, 2002, it was assigned Act No. 14-543 and transmitted to both Houses of Congress for its review. D.C. Law 14-307 became effective on June 5, 2003.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 2-218.54.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 2-218.02.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 2-218.50.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Short title. — Short title: Section 1090 of D.C. Law 18-111 provided that subtitle J of title I of the act may be cited as the “Criteria for Council Review of Contract Options Clarification Amendment Act of 2009”.

Short title: Section 1190 of D.C. Law 18-111 provided that subtitle T of title I of the act may be cited as the “Transportation Procurement Practices Amendment Act of 2009”.

Short title: Section 1151 of D.C. Law 18-223 provided that subtitle P of title I of the act may be cited as the “Transportation Procurement Practices Amendment Act of 2010”.

Resolutions. — Resolution 14-86, the “Contract with Greater Southeast Community Hospital to Establish the D.C. Healthcare Alliance Disapproval Emergency Resolution of 2001”, was approved effective April 27, 2001.

Editor’s notes. — Sections 2 and 5 of D.C. Law 17-290 provided:

“Sec. 2. The Mayor transmitted to the Council a request for Council approval of a proposed lease agreement (‘Lease’) by which, subject to certain conditions contained in the Lease, the District will lease a portion of the Benning-Stoddert Recreation Center property, consisting of Lot 807, Square 5407, and portions of Lots 802, 803, 812, and 25, Square 5402, as further defined in Exhibit A to the Lease (‘Property’), for a term of 70 years (including option years) to the Washington Tennis & Education Foundation, a District of Columbia nonprofit corporation, to be used for recreational purposes.”

“Sec. 5. The Lease and the Memorandum of Agreement shall be exempt from the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 et seq.).”

§ 2-301.05b. Privatization contracts and procedures requirements. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 105b, as added Mar. 19, 1994, D.C. Law 10-79, § 2(b), 40 DCR 8696; Mar. 5, 1996, D.C. Law 11-98, § 501(a), 43 DCR 5; Apr. 4, 2001, D.C. Law 13-274, § 3, 48 DCR 1654; Dec. 7, 2004, D.C. Law 15-205, § 1192(a), 51 DCR 8441; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1181.5b.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 701 of the Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see §§ 2 through 4 of the Department of Corrections Privatization Facilitation Temporary Act of 1996 (D.C. Law 11-149, July 20, 1996, law notification 43 DCR 4354).

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 through 4 of the District Employee Protection Temporary Act of 2009 (D.C. Law 17-386, March 31, 2009, law notification 56 DCR 3452).

Emergency legislation. — Fleet Management Services of the Metropolitan Police Department: For temporary provisions concerning the privatization of Fleet Management Services in the Metropolitan Police Department, see § 701 of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994

(D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 2 of the Tenant Representative Services Facilitation Emergency Exemption Act of 1997 (D.C. Act 12-3, February 24, 1997, 44 DCR 1605).

For temporary exemption from the requirements of the District of Columbia Procurement Practices Act of 1985 privatization initiatives of the Department of Corrections to contract-out food, medical, inmate finance, and canteen services, and time and attendance responsibilities, and to contract for the sale and lease-back of the Correctional Treatment Facility, see §§ 2-4 of the Department of Corrections Privatization Facilitation Emergency Act of 1996 (D.C. Act 11-251, April 15, 1996, 43 DCR 2135), §§ 2-4 of the Department of Corrections Privatization Facilitation Congressional Review Emergency Act of 1996 (D.C. Act 11-305, July 24, 1996, 43 DCR 4200), and §§ 2-4 of the Department of Corrections Privatization Facilitation Emergency Act of 1997 (D.C. Act 12-29, March 18, 1997, 44 DCR 1897).

For temporary repeal of the Department of Corrections Procurement and Privatization Ex-

emption Emergency Amendment Act of 1996 (D.C. Act 11-220, February 23, 1996, 43 DCR 1176), see § 5 of the Department of Corrections Privatization Facilitation Emergency Act of 1997 (D.C. Act 12-29, March 18, 1997, 44 DCR 1897).

For temporary (90 day) amendment of section, see § 1192(a) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1192(a) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) addition, see § 2 of District Employee Protection Emergency Act of 2008 (D.C. Act 17-645, January 8, 2009, 56 DCR 898).

Legislative history of Law 10-79. — Law 10-79, the “Privatization Procurement and Contract Procedures Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-285, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on September 21, 1993, and November 2, 1993, respectively. Vetoed by the Mayor on November 19, 1993, Council overrode the veto on December 7, 1993, and the Bill was assigned Act No. 10-153 and transmitted to both Houses of Congress for its review. D.C. Law 10-79 became effective on March 19, 1994.

Legislative history of Law 11-78. — For legislative history of D.C. Law 11-78, see Historical and Statutory Notes following § 2-301.05c.

Legislative history of Law 11-98. — For legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 2-301.05c.

Legislative history of Law 13-274. — Law 13-274, the “Equity in Contracting Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-751, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 5, 2000, and December 15, 2000, respectively. Signed by the Mayor on January 16, 2001, it was assigned Act No. 13-568 and transmitted to Both Houses of Congress for its review. D.C. Law 13-274 became effective on April 4, 2001.

Legislative history of Law 15-205. — Law 15-205, the “Fiscal Year 2005 Budget Support Act of 2004”, was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Short title. — Short title of subtitle R of title I of Law 15-205: Section 1191 of D.C. Law 15-205 provided that subtitle R of title I of the act may be cited as District of Columbia Auditor Statutory Audit Requirements Amendment Act of 2004.

Editor’s notes. — Privatization of Government Services Task Force: D.C. Law 10-240 provided that the Mayor shall appoint a Privatization of Government Services Task Force that will examine the potential benefits of privatizing certain government services and programs.

§ 2-301.05c. Policy for contracting out government services. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 105c, as added Mar. 5, 1996, D.C. Law 11-98, § 501(b), 43 DCR 5; Apr. 4, 2001, D.C. Law 13-274, § 4, 48 DCR 1654.)

Prior Codifications. — 1981 Ed., § 1-1181.5c.

Legislative history of Law 11-98. — Law 11-98, the “Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-440, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1995, and

December 5, 1995, respectively. Signed by the Mayor on December 26, 1995, it was assigned Act No. 11-181 and transmitted to both Houses of Congress for its review. D.C. Law 11-98 became effective on March 5, 1996.

Legislative history of Law 13-274. — For D.C. Law 13-274, see notes following § 2-301.05b.

§ 2-301.05d. Council review of proposals to contract out in excess of \$1,000,000. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 105d, as added Mar. 5, 1996, D.C. Law 11-98, § 501(b), 43 DCR 5; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1181.5d.

Legislative history of Law 11-78. — For legislative history of D.C. Law 11-78, see Historical and Statutory Notes following § 2-301.05c.

Legislative history of Law 11-98. — For

legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 2-301.05c.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-301.05e. Director of the Office of Contracting and Procurement. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 105e, as added Apr. 15, 1997, D.C. Law 11-259, § 101(d), 44 DCR 1423; Mar. 24, 1998, D.C. Law 12-82, § 2(a), 45 DCR 772; May 8, 1998, D.C. Law 12-104, § 2(c), 45 DCR 1687; Oct. 14, 1999, D.C. Law 13-49, § 4, 46 DCR 5153; Apr. 12, 2000, D.C. Law 13-91, § 121, 47 DCR 520; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1181.5e.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(c) of the Procurement Reform Temporary Amendment Act of 1997 (D.C. Law 12-17, September 12, 1997, law notification 44 DCR 5459)

For temporary (225 day) amendment of section, see § 2 of the Chief Procurement Officer Qualification Temporary Amendment Act of 1997 (D.C. Law 12-67, March 20, 1998, law notification 45 DCR 2102).

Emergency legislation. — For temporary amendment of section, see § 3 of the Procurement Reform Emergency Amendment Act of 1997 (D.C. Act 12-62, April 15, 1997, 44 DCR 2413) and § 3(c) of the Procurement Reform Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-133, August 12, 1997, 44 DCR 4832).

For temporary amendment of section, see § 2 of the Chief Procurement Officer Qualification Emergency Amendment Act of 1997 (D.C. Act 12-185, October 31, 1997, 44 DCR 6962).

For temporary amendment of section, see § 2(c) of the Procurement Reform Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338).

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see His-

torical and Statutory Notes following § 2-301.01.

Legislative history of Law 12-82. — Law 12-82, the “Chief Procurement Officer Qualification Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-366, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 4, 1997, and December 16, 1997, respectively. Signed by the Mayor on January 8, 1998, it was assigned Act No. 12-249 and transmitted to both Houses of Congress for its review. D.C. Law 12-82 became effective on March 24, 1998.

Legislative history of Law 12-104. — For legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-301.04.

Legislative history of Law 13-49. — Law 13-49, the “Criminal Code and Clarifying Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-61, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 2, 1999, and April 13, 1999, respectively. Signed by the Mayor on May 13, 1999, it was assigned Act No. 13-69 and transmitted to both Houses of Congress for its review. D.C. Law 13-49 became effective on October 19, 1999.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 2-201.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-301.05f. Direct voucher payments. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 105f, as added June 8, 2006, D.C. Law 16-122, § 2(b), 53 DCR 2834; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Legislative history of Law 16-122. — For history of Law 18-371, see notes under § 2-301.01.
Law 16-122, see notes following § 2-301.01.

Legislative history of Law 18-371. — For

§ 2-301.06. Determinations. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 106, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1181.6.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-301.07. Definitions. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 107, 32 DCR 7396; May 23, 1986, D.C. Law 6-116, § 3(a), 33 DCR 2432; June 28, 1994, D.C. Law 10-134, § 6(a), 41 DCR 2597; Apr. 12, 1997, D.C. Law 11-259, § 101(e), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 2(d), 45 DCR 1687; Sept. 16, 2000, D.C. Law 13-155, § 2(a), 47 DCR 5035; Apr. 4, 2001, D.C. Law 13-274, § 2, 48 DCR 1654; Apr. 4, 2003, D.C. Law 14-284, § 2(a), 50 DCR 935; Mar. 13, 2004, D.C. Law 15-105, §§ 102(b), 103, 51 DCR 881; Apr. 5, 2005, D.C. Law 15-281, § 2(a), 52 DCR 847; June 8, 2006, D.C. Law 16-122, § 2(c), 53 DCR 2834; Apr. 24, 2007, D.C. Law 16-305, § 8, 53 DCR 6198; June 5, 2008, D.C. Law 17-173, § 2(a), 55 DCR 5383; Mar. 25, 2009, D.C. Law 17-353, 106(b), 56 DCR 1117; Oct. 22, 2009, D.C. Law 18-64, § 2(a), 56 DCR 6603; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1181.7.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 6(a) of South Africa Sanctions Repeal Act of 1993 (D.C. Law 10-75, March 8, 1994, law notification 41 DCR 1518)

For temporary (225 day) amendment of section, see § 3(d) of the Procurement Reform Temporary Amendment Act of 1997 (D.C. Law

12-17, September 12, 1997, law notification 44 DCR 5459)

Emergency legislation. — For temporary repeal of the Department of Corrections Procurement and Privatization Exemption Emergency Amendment Act of 1996 (D.C. Act 11-220, February 23, 1996, 43 DCR 1176), see § 2 of the Department of Corrections Privatization Facilitation Emergency Act of 1997 (D.C. Act 12-29, March 18, 1997, 44 DCR 1897).

For temporary amendment of section, see § 3(d) of the Procurement Reform Emergency Amendment Act of 1997 (D.C. Act 12-62, April 15, 1997, 44 DCR 2413), and § 3(d) of the Procurement Reform Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-133, August 12, 1997, 44 DCR 4832).

For temporary amendment of section, see § 2(d) of the Procurement Reform Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338).

For temporary (90-day) amendment of section, see § 2(a) of the Procurement Practices Human Care Agreement Emergency Amendment Act of 2000 (D.C. Act 13-348, June 5, 2000, 47 DCR 5009).

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 6-116. — Law 6-116 was introduced in Council and assigned Bill No. 6-165, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 11, 1986 and March 25, 1986, respectively. Signed by the Mayor on April 8, 1986, it was assigned Act No. 6-151 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-134. — Law 10-134, the “South Africa Sanctions Repeal Act of 1994,” was introduced in Council and assigned Bill No. 10-427, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 28, 1994, it was assigned Act No. 10-234 and transmitted to both Houses of Congress for its review. D.C. Law 10-134 became effective on June 28, 1994.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 12-104. — For legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-301.04.

Legislative history of Law 13-155. — Law 13-155, the “Procurement Practices Human Care Agreement Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-353, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 4, 2000, and May 3, 2000, respectively. Signed by the Mayor on May 19, 2000, it was assigned Act No. 13-353 and transmitted to both Houses of Congress for its review. D.C. Law 13-155 became effective on September 16, 2000.

Legislative history of Law 13-274. — For D.C. Law 13-274, see notes following § 2-301.05b.

Legislative history of Law 14-284. — Law 14-284, the “Energy and Operational Efficiency Performance-Based Contracting Amendment Act of 2002,” was introduced in Council and assigned Bill No. 14-720, which was referred to Committee on Government Operations. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-618 and transmitted to both Houses of Congress for its review. D.C. Law 14-284 became effective on April 4, 2003.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 2-301.05

Legislative history of Law 15-281. — Law 15-281, the “Energy Star Efficiency Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-440, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-673 and transmitted to both Houses of Congress for its review. D.C. Law 15-281 became effective on April 5, 2005.

Legislative history of Law 16-122. — For Law 16-122, see notes following § 2-301.01.

Legislative history of Law 16-305. — Law 16-305, the “People First Respectful Language Modernization Act of 2006,” was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

Legislative history of Law 17-173. — Law 17-173, the “Procurement of Natural Gas and Electricity Exemption Amendment Act of 2008,” was introduced in Council and assigned Bill No. 17-361 which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on March 4, 2008, and April 1, 2008, respectively. Signed by the Mayor on April 17, 2008, it was assigned Act No. 17-357 and transmitted to both Houses of Congress for its review. D.C. Law 17-173 became effective on June 5, 2008.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 2-218.42.

Legislative history of Law 18-64. — Law 18-64, the “Procurement Practices Amendment Act of 2009,” as introduced in Council and assigned Bill No. 18-7, which was referred to the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on June 30, 2009, and July 14, 2009, respectively. Signed by the Mayor on

July 28, 2009, it was assigned Act No. 18-160 and transmitted to both Houses of Congress for its review. D.C. Law 18-64 became effective on October 22, 2009.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Subchapter II. Procurement Organization.

§ 2-302.01. Policy. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 201, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(f), 44 DCR 1423; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1182.1.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Delegation of Authority. — Delegation of Authority to the Deputy Mayor for Planning and Economic Development—Contracting and Procurement Authority, see Mayor's Order 2009-88, June 1, 2009 (56 DCR 6830).

§ 2-302.02. Procurement regulations and information system. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 202, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(g), 44 DCR 1423; Apr. 7, 2006, D.C. Law 16-91, § 130(b), 52 DCR 10637; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1182.2.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 2-218.54.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Delegation of Authority. — Delegation of Authority Under D.C. Law 6-85, the "D.C. Procurement Practices Act of 1985", see Mayor's Order 2002-207, December 27, 2002 (49 DCR 11867).

§ 2-302.03. Duties of Director. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 203, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(h), 44 DCR 1423; Oct. 4, 2000, D.C. Law 13-169, § 3, 47 DCR 5846; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1182.3.

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 3 of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises

Temporary Amendment Act of 2000 (D.C. Law 13-216, April 3, 2001, law notification 48 DCR 3458).

Emergency legislation. — For temporary (90-day) amendment of section, see § 3 of the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Emergency Amendment Act of 2000 (D.C. Act 13-415, August 14, 2000, 47 DCR 7296).

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 13-169. — For Law 13-169, see notes following § 2-201.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-302.04. Regulatory powers of Mayor. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 204, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(i), 44 DCR 1423; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1182.4.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 1-1181.1.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For

history of Law 18-371, see notes under § 2-301.01.

Delegation of Authority. — Delegation of Authority Under D.C. Law 6-85, the “D.C. Procurement Practices Act of 1985”, see Mayor’s Order 2002-117, July 19, 2002 (49 DCR 6880).

Delegation of Authority Under D.C. Law 6-85, the “D.C. Procurement Practices Act of 1985”, see Mayor’s Order 2002-207, December 27, 2002 (49 DCR 11867).

§ 2-302.05. Establishment and effect of District Government Procurement Regulations. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 205, 32 DCR 7396; May 23, 1986, D.C. Law 6-116, § 3(b), 33 DCR 2432; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1182.5.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 6-116. — For legislative history of D.C. Law 6-116, see Historical and Statutory Notes following § 2-301.07.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Resolutions. — Resolution 15-447, the “Revised Privatization Contracts Disapproval Resolution of 2004”, was approved effective February 3, 2004.

Resolution 16-167, the “Procurement TANF

Contract Source Selection Rulemaking Approval Resolution of 2005”, was approved effective June 7, 2005.

Resolution 16-588, the “Notice of Contract Awards Amendment Approval Resolution of 2006”, was approved effective March 28, 2006.

Resolution 16-782, the “Contractors Approval Resolution of 2006”, was approved effective July 16, 2006.

Resolution 17-64, the “Special Contracting Methods Approval Resolution of 2007”, was approved effective February 17, 2007.

Resolution 17-442, the “Required Sources of Supplies and Services Approval Resolution of 2007”, was approved effective December 11, 2007.

Resolution 17-794, the “Procurement by

Competitive Sealed Proposals Amendment Approval Resolution of 2008", was approved effective October 7, 2008.

Editor's notes. — The word "period" was inserted in subsection (b) to correct an omission in D.C. Law 6-85.

Approval of initial District of Columbia Procurement Practices Act rules: Pursuant to Resolution 7-181, the "District of Columbia Procurement Practices Act of 1985 Initial Rules Approval Resolution of 1987," effective December 8, 1987, the Council approved proposed chapters 10, 12, 13, 15—28, 32, 38 and 41 of 27 DCMR which were submitted by the Mayor on July 9, 1987, and proposed chapters 11, 31, 33, 36, 37, 40, 42 and 45 of 27 DCMR which were submitted by the Mayor on October 5, 1987. Final rulemaking effective February 26, 1988 (35 DCR 1385).

Disapproval of amendments to District of Columbia Procurement Practices Act rules: Pursuant to Resolution 8-216, the "District of Columbia Procurement Practices Act of 1985 Amend. to Rules for Special Contracting Methods Disapproval Resolution of 1990", effective April 27, 1990, the Council disapproved rules amending the District of Columbia procurement regulations to increase the number of option periods in any contract for a city-wide telecommunications system.

Contracting for Expert and Consulting Services Final Rulemaking Approval Resolution of 1996: Pursuant to Resolution 11-220, effective February 6, 1996, Council approved the final rulemaking to amend Title 27, Chapter 19 of the District of Columbia Municipal Regulations.

§ 2-302.06. Contract information hotline. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 206, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1182.6.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-302.07. Transfer of procurement personnel to the Office of Contracting and Procurement. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 207, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(j), 44 DCR 1423; Mar. 24, 1998, D.C. Law 12-82, § 2(b), 45 DCR 772; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1182.7.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 12-82. — Law 12-82, the "Chief Procurement Officer Qualification Amendment Act of 1997," was introduced

in Council and assigned Bill No. 12-366, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 4, 1997, and December 16, 1997, respectively. Signed by the Mayor on January 8, 1998, it was assigned Act No. 12-249 and transmitted to both Houses of Congress for its review. D.C. Law 12-82 became effective on March 24, 1998.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-302.08. Creation and duties of Office of the Inspector General.

Recodified as § 1-301.115a.

(Feb. 21, 1986, D.C. Law 6-85, § 208, 32 DCR 7396; Mar. 16, 1989, D.C. Law 7-201, § 5, 36 DCR 248; Apr. 17, 1995, 109 Stat. 148-151, Pub. L. 104-8, § 303(a)-(d); Apr. 9, 1997, D.C. Law 11-255, § 5, 44 DCR 1271; Aug. 5, 1997, 111 Stat. 777, Pub. L. 105-33, § 11601(b)(3); Oct. 21, 1998, 112 Stat. 2681-148, Pub. L. 105-277, § 160; Mar. 26, 1999, D.C. Law 12-190, § 2, 45 DCR 7814; April 5, 2000, D.C. Law 13-71, § 2, 46 DCR 10403; May 9, 2000, D.C. Law 13-105, § 29(a), 47 DCR 1325; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-552, § 164(a); June 19, 2001, D.C. Law 13-313, § 4(b), 48 DCR 1873; July 30, 2003, D.C. Law 15-26, § 2, 50 DCR 4651; Dec. 7, 2004, D.C. Law 15-212, § 2(a), 51 DCR 8820; Oct. 16, 2006, 120 Stat. 2043, Pub. L. 109-356, § 308(b); Mar. 14, 2007, D.C. Law 16-267, § 2, 54 DCR 831.)

Subchapter III. Source Selection and Contract Formation.

§ 2-303.01. District-based businesses preference. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 301, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.1.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-303.02. Methods of source selection and record-keeping. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 302, 32 DCR 7396; Mar. 26, 1999, D.C. Law 12-175, § 402(b), 45 DCR 7193; Apr. 12, 2000, D.C. Law 13-91, § 119(b), 47 DCR 520; Sept. 16, 2000, D.C. Law 13-155, § 2(b), 47 DCR 5035; June 8, 2006, D.C. Law 16-122, § 2(d), 53 DCR 2834; Oct. 22, 2009, D.C. Law 18-64, § 2(b), 56 DCR 6603; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.2.

Emergency legislation. — For temporary amendment of section, see § 202(b) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 202(b) of the Fiscal Year 1999 Budget Support Congressional Review Emer-

gency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary (90-day) amendment of section, see § 202(b) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90-day) amendment of sec-

tion, see § 2(b) of the Procurement Practices Human Care Agreement Emergency Amendment Act of 2000 (D.C. Act 13-348, June 5, 2000, 47 DCR 5009).

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 2-301.05.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 2-201.01.

Legislative history of Law 13-155. — For Law 13-155, see notes following § 2-301.07.

Legislative history of Law 16-122. — For Law 16-122, see notes following § 2-301.01.

Legislative history of Law 18-64. — For Law 18-64, see notes following § 2-301.07.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-303.03. Competitive sealed bidding. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 303, 32 DCR 7396; Apr. 20, 1999, D.C. Law 12-243, § 2, 46 DCR 962; Apr. 12, 2000, D.C. Law 13-91, § 119(c), 47 DCR 520; Oct. 22, 2009, D.C. Law 18-64, § 2(c), 56 DCR 6603; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.3.

Emergency legislation. — For exemption of a contract from the requirements of section, see § 2 of the Contract No. DCPS-C-99143-7373-AS (Special Education Management Information System) Advertising Exemption Emergency Act of 2000 (D.C. Act 13-368, July 10, 2000, 47 DCR 5830).

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 12-243. — Law 12-243, the “Procurement Practices Bid Notice Period Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-805, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-577 and transmitted to both Houses of Congress for its review. D.C. Law 12-243 became effective on April 20, 1999.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 2-201.01.

Legislative history of Law 18-64. — For Law 18-64, see notes following § 2-301.07.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Editor’s notes. — District of Columbia Public Schools exception: Section 123 of Pub. L. 104-194, 110 Stat. 2367, the District of Columbia Appropriations Act, 1997, provided that no sole source contract with the District of Columbia government or any agency thereof maybe renewed or extended without opening that contract to the competitive bidding process as set forth in § 1-1183.3 § 2-303.03, 2001 Ed., except that the District of Columbia Public Schools may renew or extend sole source contracts for which competition is not feasible or practical, provided that the determination as to whether to invoke the competitive bidding process has been made in accordance with duly promulgated Board of Education rules and procedures.

§ 2-303.04. Competitive sealed proposals. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 304, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(l), 44 DCR 1423; Apr. 12, 2000, D.C. Law 13-91, § 119(d), 47 DCR 520; Sept. 16, 2000, D.C. Law 13-155, § 2(c), 47 DCR 5035; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.4.

Emergency legislation. — For temporary (90-day) amendment of section, see § 2(c) of the

Procurement Practices Human Care Agreement Emergency Amendment Act of 2000 (D.C. Act 13-348, June 5, 2000, 47 DCR 5009).

Legislative history of Law 6-85. — For

legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 2-201.01.

Legislative history of Law 13-155. — For Law 13-155, see notes following § 2-301.07.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-303.05. Sole source procurement. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 305, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(m), 44 DCR 1423; Mar. 17, 2002, D.C. Law 14-83, § 2, 49 DCR 196; Oct. 16, 2006, 120 Stat. 2040, Pub. L. 109-356, § 304; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.5.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 14-83. — Law 14-83, the “Procurement Practices Negotiated Pricing Amendment Act of 2001”, was introduced in Council and assigned Bill No. 14-107, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 6, 2001, and December 4, 2001, respectively. Signed by the Mayor on December 20, 2001, it was assigned Act No. 14-203 and transmitted to both Houses of Congress for its review. D.C. Law 14-83 became effective on March 19, 2002.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Editor’s notes. — Restrictions on renewal or extension of sole source contracts: Section 123 of Pub. L. 104-194, 110 Stat. 2367, the District of Columbia Appropriations Act, 1997, provided that no sole source contract with the District of Columbia government or any agency thereof may be renewed or extended without opening that contract to the competitive bidding process as set forth in § 1-1183.3 § 2-303.03, 2001 Ed., except that the District of Columbia Public Schools may renew or extend sole source contracts for which competition is not feasible or practical, provided that the determination as to whether to invoke the competitive bidding process has been made in accordance with duly promulgated Board of Education rules and procedures.

§ 2-303.06. General limitations; small purchase procurements. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 306, 32 DCR 7396; Nov. 25, 1993, D.C. Law 10-65, § 602, 40 DCR 7351; Apr. 12, 1997, D.C. Law 11-259, § 101(n), 44 DCR 1423.)

Prior Codifications. — 1981 Ed., § 1-1183.6.

Legislative history of Law 11-259. — For

legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 1-1181.1.

§ 2-303.06a. Award of human care procurements. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 306a, as added Sept. 16, 2000, D.C. Law 13-155, § 2(d), 47 DCR 5035; Apr. 24, 2007, D.C. Law 16-305, § 9, 53 DCR 6198; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.6a.

Emergency legislation. — For temporary (90-day) addition of section, see § 2(d) of the Procurement Practices Human Care Agreement Emergency Amendment Act of 2000 (D.C. Act 13-348, June 5, 2000, 47 DCR 5009).

Legislative history of Law 13-155. — For Law 13-155, see notes following § 2-301.07.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 2-301.07.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-303.07. Cancellation of invitations for bids. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 307, 32 DCR 7396; Oct. 22, 2009, D.C. Law 18-64, § 2(d), 56 DCR 6603; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.7.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-64. — For Law 18-64, see notes following § 2-301.07.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-303.07a. Mandatory clause for all Request for Proposals for Public Schools. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 307a, as added Apr. 9, 1997, D.C. Law 11-198, § 702, 43 DCR 4569; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.7a.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 702 of the Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996, (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

For temporary (225 day) amendment of section, see § 2(f) of the Fiscal Year 1997 Budget Support Temporary Amendment Act of 1997, (D.C. Law 12-4, May 23, 1997, law notification 44 DCR 3718).

Emergency legislation. — For temporary addition of section, see § 702 of the Fiscal Year 1997 Budget Support Congressional Adjourn-

ment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

For temporary repeal of § 702 of D.C. Act 11-360, see § 2(f) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1997 (D.C. Act 12-37, March 18, 1997, 44 DCR 1935).

Legislative history of Law 11-198. — Law 11-198, the “Fiscal Year 1997 Budget Support Act of 1996,” was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses

of Congress for its review. D.C. Law 11-198 became effective on April 9, 1997.

history of Law 18-371, see notes under § 2-301.01.

Legislative history of Law 18-371. — For

§ 2-303.08. Cost or pricing data. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 308, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(o), 44 DCR 1423; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.8.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For

legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01x.

§ 2-303.09. Cost-plus-a-percentage-of-cost contract prohibited. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 309, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.9.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-303.10. Cost-reimbursement contracts. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 310, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.10.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-303.11. Use of other types of contracts. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 311, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.11.

Legislative history of Law 6-85. — For

legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For

history of Law 18-371, see notes under § 2-301.01.

§ 2-303.12. Emergency procurements. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 312, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(p), 44 DCR 1423; June 8, 2006, D.C. Law 16-122, § 2(e), 53 DCR 2834; Mar. 25, 2009, D.C. Law 17-353, § 107, 56 DCR 1117; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.12.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 16-122. — For Law 16-122, see notes following § 2-301.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 2-218.42.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-303.13. Multiyear contracts. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 313, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.13.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-303.14. Inspection of plant and audit of records. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 314, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.14.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-303.15. Finality of determinations. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 315, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.15.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-303.16. Collusive bidding or negotiation. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 316, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.16.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-303.17. Prohibited acts. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 317, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.17.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-303.18. Termination of contracts. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 318, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.18.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-303.19. Report of procurement actions made pursuant to §§ 2-303.05 and 12-303.12. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 319, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.19.

Legislative history of Law 6-85. — For

legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For

history of Law 18-371, see notes under § 2-301.01.

§ 2-303.19a. Report by Chief Procurement Officer. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 319a, as added June 8, 2006, D.C. Law 16-122, § 2(f), 53 DCR 2834; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Legislative history of Law 16-122. — For history of Law 18-371, see notes under § 2-301.01.

Legislative history of Law 18-371. — For

§ 2-303.20. Exemptions [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 320, 32 DCR 7396, as added Apr. 12, 1997, D.C. Law 11-259, § 101(q), 44 DCR 1423; Feb. 27, 1998, D.C. Law 12-50, § 2(a), 44 DCR 6222; Mar. 24, 1998, D.C. Law 12-82, § 2(c), 45 DCR 772; Apr. 20, 1999, D.C. Law 12-263, § 13(b), 46 DCR 2111; Apr. 20, 1999, D.C. Law 12-264, § 9, 46 DCR 2118; May 9, 2000, D.C. Law 13-105, § 29(b), 47 DCR 1325; Apr. 4, 2001, D.C. Law 13-277, § 3(c), 48 DCR 2043; July 12, 2001, D.C. Law 14-18, § 9(d), 48 DCR 4047; Oct. 3, 2001, D.C. Law 14-28, § 1507(b), 48 DCR 6981; Dec. 18, 2001, D.C. Law 14-56, § 116(b), 48 DCR 7674; Mar. 13, 2004, D.C. Law 15-105, § 22(b), 51 DCR 881; Apr. 12, 2005, D.C. Law 15-342, § 301, 52 DCR 2346; Mar. 2, 2007, D.C. Law 16-191, § 118, 53 DCR 6794; Mar. 2, 2007, D.C. Law 16-197, § 3, 53 DCR 8827; June 12, 2007, D.C. Law 17-9, § 1002(b), 54 DCR 4102; June 5, 2008, D.C. Law 17-173, § 2(b), 55 DCR 5383; Mar. 25, 2009, D.C. Law 17-353, §§ 142, 203(d), 56 DCR 1117; Mar. 3, 2010, D.C. Law 18-111, §§ 1313, 2082(d), 4042, 57 DCR 181; Mar. 8, 2011, D.C. Law 18-286, § 3, 57 DCR 11012; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.20.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of the Chief Technology Officer Year 2000 Remediation Procurement Authority Temporary Amendment Act of 1999 (D.C. Law 13-17, July 17, 1999, law notification 46 DCR 6314).

For temporary (225 day) amendment of section, see § 16(b) of the Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 58 DCR 10807).

For temporary (225 day) amendment of section, see § 2 of the Contract No. DCFRA 00-C-030B, (Capital Improvements and Renovations to Various Metropolitan Police Department Facilities) Exemption Temporary Amendment Act

of 2002 (D.C. Law 14-200, October 17, 2002, law notification 49 DCR 10018).

For temporary (225 day) amendment of section, see § 3 of the Solid Waste Transfer Station Service and Settlement Agreements Temporary Amendment Act of 2002 (D.C. Law 14-229, March 25, 2003, law notification 50 DCR 2742).

For temporary (225 day) amendment of section, see § 2 of the Contract No. DCFJ-2004-B-0031 (Delivery of Electrical Power and Ancillary Services) Exemption Temporary Amendment Act of 2004 (D.C. Law 15-231, on March 16, 2005, law notification 52 DCR 3557).

For temporary (225 day) amendment of section, see § 3 of the Oak Hill Construction Streamlining Temporary Amendment Act of 2006 (D.C. Law 16-136, June 16, 2006, law notification 53 DCR 5764).

For temporary (225 day) amendment of sec-

tion, see § 2 of the Procurement of Natural Gas and Electricity Exemption Temporary Amendment Act of 2006 (D.C. Law 16-174, November 16, 2006, law notification 53 DCR 9641).

For temporary (225 day) amendment of section, see § 3 of the DCPL Procurement Temporary Amendment Act of 2009 (D.C. Law 18-45, September 11, 2009, law notification 56 DCR 7766).

For temporary (225 day) amendment of section, see § 4 of the Boys and Girls Club of Greater Washington Property Acquisition Temporary Act of 2009 (D.C. Law 18-58, October 3, 2009, law notification 56 DCR 8225).

For temporary (225 day) amendment of section, see § 3 of the University of the District of Columbia Procurement Authority Temporary Amendment Act of 2009 (D.C. Law 18-92, December 17, 2009, law notification 57 DCR 1164).

For temporary (225 day) amendment of section, see § 3 of the University of the District of Columbia Board of Trustees Quorum and Contracting Reform Temporary Amendment Act of 2010 (D.C. Law 18-282, March 8, 2011, law notification 58 DCR 2898).

Emergency legislation. — For temporary amendment of section, see § 3 of the District of Columbia Public Service Commission Independent Procurement Authority Emergency Amendment Act of 1998 (D.C. Act 12-438, August 18, 1998, 45 DCR 6291).

For temporary amendment of section, see § 2 of the Photo Enforcement Evidenced Traffic Violation System Emergency Amendment Act of 1998 (D.C. Act 12-516, December 9, 1998, 45 DCR 9177).

For temporary (90-day) amendment of section, see § 3 of the Chief Technology Officer Year 2000 Remediation Procurement Authority Emergency Amendment Act of 1999 (D.C. Act 13-38, March 22, 1999, 46 DCR 3015).

For temporary (90-day) amendment of section, see § 2 of the Public Service Commission Independent Procurement Authority Emergency Amendment Act of 1999 (D.C. Act 13-52, April 6, 1999, 46 DCR 3638).

For temporary (90-day) amendment of section, see § 2 of the Contract No. GF98102 (University Bookstore Operation and Management) Emergency Exemption Amendment Act of 1999 (D.C. Act 13-103, July 9, 1999, 46 DCR 6020).

For temporary (90-day) amendment of section, see § 3 of the Chief Technology Officer Year 2000 Remediation Procurement Authority Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-106, July 9, 1999, 46 DCR 6028).

For temporary (90-day) amendment of section, see §§ 2 to 4 of the Southeast Tennis and Learning Center Construction Emergency Act

of 1999 (D.C. Act 13-183, November 2, 1999, 46 DCR 9742).

For temporary (90-day) amendment of section, see § 28(b) of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) amendment of section, see § 28(b) of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

For temporary (90 day) amendment of section, see § 16(b) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(b) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 1407(b) of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 116(b) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary (90 day) amendment of section, see § 2 of Contract No. DCFRA 00-C-030B (Capital Improvements and Renovations to Various Metropolitan Police Department Facilities) Exemption Holiday Emergency Amendment Act of 2002 (D.C. Act 14-392, June 24, 2002, 49 DCR 6089).

For temporary (90 day) amendment of section, see § 3 of Solid Waste Transfer Station Service and Settlement Agreements Emergency Amendment Act of 2002 (D.C. Act 14-426, July 17, 2002, 49 DCR 7631).

For temporary (90 day) amendment of section, see § 2 of Contract No. DCFRA 00-C-030B (Capital Improvements and Renovations to Various Metropolitan Police Department Facilities) Exemption Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-475, October 3, 2002, 49 DCR 9566).

For temporary (90 day) amendment of section, see § 3 of Solid Waste Transfer Station Service and Settlement Agreements Congressional Review Emergency Act of 2002 (D.C. Act 14-506, October 23, 2002, 49 DCR 10215).

For temporary (90 day) amendment of section, see § 2 of Contract DCFJ-2004-B-0031 (Delivery of Electric Power and Ancillary Services) Exemption Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-617, November 30, 2004, 51 DCR 11447).

For temporary (90 day) amendment of section, see § 301 of Omnibus Utility Emergency

Amendment Act of 2005 (D.C. Act 16-12, January 28, 2005, 52 DCR 2945).

For temporary (90 day) amendment of section, see § 3 of Oak Hill Construction Streamlining Emergency Amendment Act of 2006 (D.C. Act 16-332, March 23, 2006, 53 DCR 2594).

For temporary (90 day) amendment of section, see § 2 of Procurement of Natural Gas and Electricity Exemption Emergency Amendment Act of 2006 (D.C. Act 16-410, July 12, 2006, 53 DCR 5769).

For temporary (90 day) amendment of section, see § 3 of Library Procurement Emergency Amendment Act of 2006 (D.C. Act 16-483, October 18, 2006, 53 DCR 8645).

For temporary (90 day) amendment of section, see § 2 of Procurement of Natural Gas and Electricity Exemption Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-520, October 27, 2006, 53 DCR 9115).

For temporary (90 day) amendment of section, see § 3 of Library Procurement Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-661, December 28, 2006, 54 DCR 1114).

For temporary (90 day) amendment of section, see § 3 of DCPL Procurement Emergency Amendment Act of 2009 (D.C. Act 18-93, May 20, 2009, 56 DCR 4311).

For temporary (90 day) amendment of section, see § 4 of Boys and Girls Club of Greater Washington Property Acquisition Emergency Act of 2009 (D.C. Act 18-130, July 6, 2009, 56 DCR 5510).

For temporary (90 day) amendment of section, see § 3 of DCPL Procurement Congressional Review Emergency Act of 2009 (D.C. Act 18-151, July 28, 2009, 56 DCR 6338).

For temporary (90 day) amendment of section, see § 3 of University of the District of Columbia Procurement Authority Emergency Amendment Act of 2009 (D.C. Act 18-200, October 10, 2009, 56 DCR 8137).

For temporary (90 day) amendment of section, see §§ 2082(d), 4042 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see §§ 1313, 2082(d), 4042 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 3 of University of the District of Columbia Procurement Authority Emergency Amendment Act of 2010 (D.C. Act 18-467, July 7, 2010, 57 DCR 6914).

For temporary (90 day) amendment of section, see § 3 of University of the District of Columbia Board of Trustees Quorum and Contracting Reform Emergency Amendment Act of

2010 (D.C. Act 18-542, October 9, 2010, 57 DCR 9627).

For temporary (90 day) amendment of section, see § 3 of University of the District of Columbia Board of Trustees Quorum and Contracting Reform Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-661, December 30, 2010, 58 DCR 70).

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 12-50. — Law 12-50, the “Small Purchase Authority Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-231, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 1, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 3, 1997, it was assigned Act No. 12-164 and transmitted to both Houses of Congress for its review. D.C. Law 12-50 became effective on February 27, 1998.

Legislative history of Law 12-82. — For legislative history of D.C. Law 12-82, see Historical and Statutory Notes following § 2-301.07.

Legislative history of Law 12-263. — Law 12-263, the “Residential Real Property Seller Disclosure, Funeral Services Date Change, and Public Service Commission Independent Procurement Authority Act of 1998,” was introduced in Council and assigned Bill No. 12-648, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 6, 1998, and November 10, 1998, respectively. Signed by the Mayor on December 1, 1998, it was assigned Act No. 12-625 and transmitted to both Houses of Congress for its review. D.C. Law 12-263 became effective on April 20, 1999.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 2-301.05.

Legislative history of Law 13-105. — Law 13-105, the “District of Columbia Housing Authority Act of 1999,” was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Legislative history of Law 13-277. — Law 13-277, the “Child and Family Services Agency Establishment Amendment Act of 2001,” was introduced in Council and assigned Bill No.

13-796, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 24, 2001, it was assigned Act No. 13-590 and transmitted to Both Houses of Congress for its review. D.C. Law 13-277 became effective on April 4, 2001.

Legislative history of Law 14-18. — Law 14-18, the “Health Care Privatization Amendment Act of 2001”, was approved April 30, 2001 by the District of Columbia Financial Responsibility and Management Assistance Authority pursuant to section 207(c) of Public Law 104-8, and assigned DCFRMA-3. The Act was transmitted to both Houses of Congress by the Authority on May 7, 2001, for its review. The Authority gave notice to the Council by letter dated August 6, 2001 that the 30-day Congressional Review Period expired on July 11, 2001. D.C. Law 14-18 became effective on July 12, 2001.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 2-301.05a.

Legislative history of Law 14-56. — Law 14-56, the “Mental Health Service Delivery Reform Act of 2001”, was introduced in Council and assigned Bill No. 14-136, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 26, 2001, and July 10, 2001, respectively. Signed by the Mayor on July 24, 2001, it was assigned Act No. 14-119 and transmitted to both Houses of Congress for its review. D.C. Law 14-56 became effective on December 18, 2001.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 2-301.07.

Legislative history of Law 15-342. — Law 15-342, the “Omnibus Utility Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-872 which was referred to the Committee on Public Interest. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 31, 2005, it was assigned Act No. 15-760 and transmitted to both Houses of Congress for its review.

D.C. Law 15-342 became effective on April 12, 2005.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 2-218.02.

Legislative history of Law 16-197. — Law 16-197, the “Library Procurement Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-562, which was referred to the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on June 6, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 23, 2006, it was assigned Act No. 16-492 and transmitted to both Houses of Congress for its review. D.C. Law 16-197 became effective on March 2, 2007.

Legislative history of Law 17-9. — For Law 17-9, see notes following § 2-301.04.

Legislative history of Law 17-173. — For Law 17-173, see notes following § 2-301.07.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 2-218.42.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 2-218.50.

Legislative history of Law 18-286. — Law 18-286, the “University of the District of Columbia Board of Trustees Quorum and Contracting Reform Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-724, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on October 19, 2010, and November 9, 2010, respectively. Enacted without signature of the Mayor on December 2, 2010, it was assigned Act No. 18-596 and transmitted to both Houses of Congress for its review. D.C. Law 18-286 became effective on March 8, 2011.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Short title. — Short title: Section 1310 of D.C. Law 18-111 provided that subtitle FF of title I of the act may be cited as the “Boys and Girls Club of Greater Washington Property Acquisition Act of 2009”.

Editor’s notes. — Sunset provision: Section 4 of D.C. Law 16-197 provided: “This act shall expire 2 years after its effective date.”

§ 2-303.21. Small purchase procurement. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 321, as added Feb. 27, 1998, D.C. Law 12-50, § 2(b), 44 DCR 6222; July 23, 2002, D.C. Law 14-180, § 2, 49 DCR 5111; Oct. 22, 2009, D.C. Law 18-64, § 2(e), 56 DCR 6603; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1183.21.

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 2 of the Procurement Practices Small Purchase Temporary Amendment Act of 2001

(D.C. Law 14-87, March 19, 2002, law notification 49 DCR 2992).

Emergency legislation. — For temporary amendment of section, see § 2 of the Small Purchase Authority Congressional Recess Emergency Amendment Act of 1997 (D.C. Act 12-237, January 13, 1998, 45 DCR 501).

For temporary addition of section, see § 2 of the Small Purchase Authority Emergency Amendment Act of 1997 (D.C. Act 12-82, June 19, 1997, 44 DCR 3719), and § 2 of the Small Purchase Authority Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-162, October 16, 1997, 44 DCR 6059).

For temporary (90 day) amendment of section, see § 2 of Procurement Practices Small Purchase Emergency Amendment Act of 2001 (D.C. Act 14-176, November 19, 2001, 48 DCR 11055).

For temporary (90 day) amendment of section, see § 2 of Procurement Practices Small Purchase Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-308, March 25, 2002, 49 DCR 3413).

For temporary (90 day) amendment of section, see § 2 of Suspension of Purchase Authority in the District of Columbia Government Purchase Card Program Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-221, November 7, 2003, 50 DCR 10051).

Legislative history of Law 12-50. — For legislative history of D.C. Law 12-50, see Historical and Statutory Notes following § 2-303.20.

Legislative history of Law 14-180. — Law 14-180, the “Procurement Practices Small Purchase Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-336, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 9, 2002, and May 7, 2002, respectively. Signed by the Mayor on May 20, 2002, it was assigned Act No. 14-373 and transmitted to both Houses of Congress for its review. D.C. Law 14-180 became effective on July 23, 2002.

Legislative history of Law 18-64. — For Law 18-64, see notes following § 2-301.07.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 6-85, the “Procurement Practices Act of 1985,” as amended, relating to Small Purchase Procurements, see Mayor’s Order 97-194, November 12, 1997 (44 DCR 7196).

Editor’s notes. — Small Purchase Procurements, see Mayor’s Order 2009-42, March 25, 2009 (56 DCR 6780).

§ 2-303.22. Energy performance-based contract procedures; required contract provisions. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 322, as added Apr. 4, 2003, D.C. Law 14-284, § 2(b), 50 DCR 935; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Temporary Addition of Section. — For temporary (225 day) amendment of section, see § 2 of the Suspension of Purchase Authority in the District of Columbia Government Purchase Card Program Temporary Amendment Act of 2003 (D.C. Law 15-61, December 9, 2003, law notification 51 DCR 1796).

Emergency legislation. — For temporary (90 day) addition of a provision suspending the purchase authority under the District of Columbia Government Purchase Card Program, see § 2 of Suspension of Purchase Authority in the District of Columbia Government Purchase Card Program Emergency Amendment Act of 2003 (D.C. Act 15-144, July 30, 2001, 50 DCR 6893).

For temporary (90 day) addition of section,

see § 2 of District of Columbia Government Purchase Card Program Reporting Requirements Emergency Amendment Act of 2004 (D.C. Act 15-562, October 26, 2004, 51 DCR 10530).

For temporary (90 day) addition of section, see § 2 of District of Columbia Government Purchase Card Program Reporting Requirements Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-40, February 17, 2005, 52 DCR 3040).

Legislative history of Law 14-284. — For Law 14-284, see notes following § 2-301.07.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-303.23. Purchase card reporting requirement. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 323, as added Apr. 12, 2005, D.C. Law 15-326, § 2, 52 DCR 1439; Apr. 7, 2006, D.C. Law 16-91, § 131, 52 DCR 10637; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Legislative history of Law 15-326. — Law 15-326, the “District of Columbia Government Purchase Card Program Reporting Requirements Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-826, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by

the Mayor on December 29, 2004, it was assigned Act No. 15-681 and transmitted to both Houses of Congress for its review. D.C. Law 15-326 became effective on April 12, 2005.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 2-218.54.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Subchapter IV. Specifications.

§ 2-304.01. Specifications. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 401, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1184.1.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-304.02. Energy conservation. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 402, 32 DCR 7396; Apr. 5, 2005, D.C. Law 15-281, § 2(b), 52 DCR 847; Apr. 7, 2006, D.C. Law 16-91, § 130(c), 52 DCR 10637; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1184.2.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 15-281. — For Law 15-281, see notes following § 2-301.07.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 2-218.54.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Subchapter V. Bonds and Construction Procurement.

§ 2-305.01. Bonds. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 501, 32 DCR 7396; Apr. 15, 1997, D.C. Law 11-259, § 101(r), 44 DCR 1423; Apr. 12, 2000, D.C. Law 13-91, § 119(e), 47 DCR 520; Apr. 7, 2006, D.C. Law 16-91, § 130(d), 52 DCR 10637; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1185.1.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 2-201.01.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 2-218.54.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-305.02. Bid bonds for construction contracts. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 502, 32 DCR 7396; Apr. 15, 1997, D.C. Law 11-259, § 101(s), 44 DCR 1423; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1185.2.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For

legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-305.03. Performance bonds for construction contracts. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 503, 32 DCR 7396; Apr. 15, 1997, D.C. Law 11-259, § 101(t), 44 DCR 1423; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1185.3.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For

legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-305.04. Payment bonds for construction contracts. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 504, 32 DCR 7396; Apr. 15, 1997, D.C. Law 11-259, § 101(u), 44 DCR 1423; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1185.4.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For

legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-305.05. Bond forms, filings, and copies. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 505, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1185.5.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-305.06. Suits on payment bonds. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 506, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1185.6.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-305.07. Clauses, modifications, and fiscal responsibility. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 507, 32 DCR 7396; Apr. 15, 1997, D.C. Law 11-259, § 101(v), 44 DCR 1423; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1185.7.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For

legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-305.08. Nondiscrimination. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 508, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1185.8.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Subchapter VI. Cost Principles.

§ 2-306.01. Rules required. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 601, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1186.1.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Subchapter VII. Supply Management.

§ 2-307.01. Supply management rules. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 701, 32 DCR 7396; Oct. 20, 2005, D.C. Law 16-33, § 1039(a), 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-191, § 5(b), 53 DCR 6794; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1187.1.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1039(a) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 16-33. — Law 16-33, the “Fiscal Year 2006 Budget Support Act of 2005”, was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C.

Law 16-33 became effective on October 20, 2005.

Legislative history of Law 16-191. — Law 16-191, the “Technical Amendments Act of 2006”, was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Short title. — Short title of subtitle I of title I of Law 16-33: Section 1038 of D.C. Law 16-33 provided that subtitle I of title I of the act may be cited as the Surplus Personal Property Sales Operating Fund Amendment Act of 2005.

§ 2-307.02. Proceeds from disposal of surplus goods. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 702, 32 DCR 7396; Oct. 20, 2005, D.C. Law 16-33, § 1039(b), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 1-1187.2.

Emergency legislation. — For temporary (90 day) repeal of section, see § 1039(b) of Fiscal Year 2006 Budget Support Emergency

Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

§ 2-307.03. District of Columbia Surplus Personal Property Sales Revolving Fund. [Repealed].

Repealed.

(Feb. 21 1986, D.C. Law 6-85, § 703, as added Oct. 20, 2005, D.C. Law 16-33, § 1039(c), 52 DCR 7503; Aug. 16, 2008, D.C. Law 17-219, § 1007, 55 DCR 7598; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Emergency legislation. — For temporary (90 day) addition, see § 1039(c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 2-307.01.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 2-218.75.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Short title. — Short title: Section 1006 of D.C. Law 17-219 provided that subtitle C of title I of the act may be cited as the “Surplus Personal Property Sales Revolving Fund Amendment Act of 2008”.

Subchapter VIII. Administrative and Civil Remedies.

PART A.

GENERAL PROVISIONS.

§ 2-308.01. Sovereign immunity defense not available. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 801, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1188.1.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Editor’s notes. — Pursuant to § 101(ff) of D.C. Law 11-259, which enacted Subpart B. Part B, 2001 Ed. of this subchapter, consisting of §§ 1-1188.7 through 1-1188.12 §§ 2-308.07 through 2-308.12, 2001 Ed., the preexisting provisions of this subchapter were designated as Subpart A of Part A, 2001 Ed.

§ 2-308.02. District government not liable for punitive damages. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 802, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1188.2.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-308.03. Claims by District government against contractor. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 803, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(w), 44 DCR 1423; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1188.3.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For

legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-308.04. Authority to debar or suspend. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 804, 32 DCR 7396; Mar. 8, 1991, D.C. Law 8-258, § 2(c), 38 DCR 974; Apr. 12, 1997, D.C. Law 11-259, § 101(x), 44 DCR 1423; Mar. 24, 1998, D.C. Law 12-81, § 3, 45 DCR 745; May 8, 1998, D.C. Law 12-104, § 2(e), 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 57, 46 DCR 2118; Apr. 12, 2000, D.C. Law 13-91, § 119(f), 47 DCR 520; Apr. 12, 2005, D.C. Law 15-327, § 2, 52 DCR 1444; Apr. 7, 2006, D.C. Law 16-91, § 130(e), 52 DCR 10637; Mar. 2, 2007, D.C. Law 16-191, § 119(b), 53 DCR 6794; Mar. 25, 2009, D.C. Law 17-353, §§ 105, 178, 56 DCR 1117; Oct. 22, 2009, D.C. Law 18-62, § 2, 56 DCR 6599; Apr. 20, 2010, D.C. Law 18-141, § 3, 57 DCR 1485; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1188.4.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(e) of the Procurement Reform Temporary Amendment Act of 1997 (D.C. Law 12-17, September 12, 1997, law notification 44 DCR 5459)

For temporary (225 day) amendment of section, see § 2 of the Debarment Procedures

Temporary Amendment Act of 2003 (D.C. Law 15-71, February 6, 2004, law notification 51 DCR 2038).

For temporary (225 day) amendment of section, see § 2 of the Debarment Procedures Temporary Amendment Act of 2004 (D.C. Law 15-246, March 17, 2005, law notification 52 DCR 4122).

Emergency legislation. — For temporary amendment of section, see § 3(e) of the Pro-

curement Reform Emergency Amendment Act of 1997 (D.C. Act 12-62, April 15, 1997, 44 DCR 2413).

For temporary amendment of section, see § 3(e) of the Procurement Reform Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-133, August 12, 1997, 44 DCR 4832).

For temporary amendment of section, see § 2(e) of the Procurement Reform Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338).

For temporary (90 day) amendment of section, see § 2 of Debarment Procedures Emergency Amendment Act of 2003 (D.C. Act 15-153, September 30, 2003, 50 DCR 8730).

For temporary (90 day) amendment of section, see § 2 of Debarment Procedures Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-349, February 6, 2004, 51 DCR 1840).

For temporary (90 day) amendment of section, see § 2 of Debarment Procedures Emergency Amendment Act of 2004 (D.C. Act 15-550, October 27, 2004, 51 DCR 10345).

For temporary (90 day) amendment of section, see § 2 of Debarment Procedures Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-4, January 19, 2005, 52 DCR 2679).

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 8-258. — For legislative history of D.C. Law 8-258, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 12-81. — Law 12-81, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 12-104. — Law 12-104, the “Procurement Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-363, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on February 3, 1998, it was assigned Act No. 12-280 and transmitted to both Houses of Congress for its review. D.C. Law 12-104 became effective on May 8, 1998.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 2-301.05.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 2-201.01.

Legislative history of Law 15-327. — Law 15-327, the “Debarment Procedures Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-833, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-683 and transmitted to both Houses of Congress for its review. D.C. Law 15-327 became effective on April 12, 2005.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 2-218.54.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 2-218.02.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 2-218.42.

Legislative history of Law 18-62. — Law 18-62, the “Debarment and Suspension Procedures Amendment Act of 2009,” as introduced in Council and assigned Bill No. 18-2, which was referred to the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on June 30, 2009, and July 14, 2009, respectively. Signed by the Mayor on July 28, 2009, it was assigned Act No. 18-158 and transmitted to both Houses of Congress for its review. D.C. Law 18-62 became effective on October 22, 2009.

Legislative history of Law 18-141. — For Law 18-141, see notes following § 2-218.02.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-308.05. Claims by contractor against District government. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 805, 32 DCR 7396; Apr. 12, 1997, D.C. Law

11-259, § 101(y), 44 DCR 1423; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1188.5.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For

legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-308.06. Interest. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 806, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(z), 44 DCR 1423; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1188.6.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For

legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

PART B.

PROCUREMENT RELATED CLAIMS.

§ 2-308.07. Definitions. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 807, 32 DCR 7396, as added Apr. 12, 1997, D.C. Law 11-259, § 101(ff), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 3, 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 3, 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 1-1188.7.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of the Procurement Reform Temporary Amendment Act of 1997 (D.C. Law 12-17, September 12, 1997, law notification 44 DCR 5459)

Emergency legislation. — For temporary amendment of subpart, see § 2 of the Procurement Reform Emergency Amendment Act of 1997 (D.C. Act 12-62, April 15, 1997, 44 DCR 2413), and see § 2 of the Procurement Reform Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-133, August 12, 1997, 44 DCR 4832).

For temporary addition of §§ 1-1188.13 and 1-1188.14 1981 Ed., see § 2 of the Procurement Reform Emergency Amendment Act of 1997 (D.C. Act 12-62, April 15, 1997, 44 DCR 2413),

and see § 2 of the Procurement Reform Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-133, August 12, 1997, 44 DCR 4832).

For temporary repeal of §§ 1-1188.8 through 1-1188.12, see § 3 of the Procurement Reform Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338).

Legislative history of Law 12-104. — Law 12-104, the “Procurement Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-363, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on February 3, 1998, it was assigned Act No. 12-280 and transmitted to both Houses of Congress for its

review. D.C. Law 12-104 became effective on May 8, 1998. 12-264, repealed §§ 1-1188.7 through 1-1188.12 [§§ 2-308.07 through 2-308.12, 2001 Ed.].

Editor's notes. — Section 3 of D.C. Law 12-104, as amended by § 59(a) of D.C. Law

§ 2-308.08. Treble damages, costs and civil penalties; exceptions. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 808, 32 DCR 7396, as added Apr. 12, 1997, D.C. Law 11-259, § 101(ff), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 3, 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 3, 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 1-1188.8. legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-

Legislative history of Law 12-104. — For 308.07.

§ 2-308.09. Corporation Counsel investigations and prosecutions; powers of prosecuting authority; civil actions by individuals as qui tam plaintiffs; jurisdiction of courts. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 809, 32 DCR 7396, as added Apr. 12, 1997, D.C. Law 11-259, § 101(ff), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 3, 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 3, 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 1-1188.9. legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-

Legislative history of Law 12-104. — For 308.07.

§ 2-308.10. Employer interference with employee disclosures; liability of employer; remedies of employee. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 810, 32 DCR 7396, as added Apr. 12, 1997, D.C. Law 11-259, § 101(ff), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 3, 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 3, 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 1-1188.10. legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-

Legislative history of Law 12-104. — For 308.07.

§ 2-308.11. Limitation of actions; activities antedating this article; burden of proof. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 811, 32 DCR 7396, as added Apr. 12, 1997,

D.C. Law 11-259, § 101(ff), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 3, 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 3, 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 1-1188.11. legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

Legislative history of Law 12-104. — For 308.07.

§ 2-308.12. Remedies under other laws; severability of provisions; liberality of construction. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 812, 32 DCR 7396, as added Apr. 12, 1997, D.C. Law 11-259, § 101(ff), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 3, 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 3, 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 1-1188.12. legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

Legislative history of Law 12-104. — For 308.07.

§ 2-308.13. Definitions. [Transferred].

Recodified as § 2-381.01.

(Feb. 21, 1996, D.C. Law 6-85, § 813, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g); Apr. 20, 1999, D.C. Law 12-264, § 10(a), 46 DCR 2118.)

§ 2-308.14. False claims liability, treble damages, costs, and civil penalties; exceptions. [Transferred].

Recodified as § 2-381.02.

(Feb. 21, 1986, D.C. Law 6-85, § 814, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687.)

§ 2-308.15. Corporation counsel investigations and prosecutions; powers of prosecuting authority; civil actions by individuals as qui tam plaintiffs; jurisdiction of courts. [Transferred].

Recodified as § 2-381.03.

(Feb. 21, 1986, D.C. Law 6-85, § 815, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 10(b), 46 DCR 2118; Mar. 11, 2010, D.C. Law 18-117, § 4, 57 DCR 896.)

§ 2-308.16. Employer interference with employee disclosures; liability of employer; remedies of employee. [Transferred].

Recodified as § 2-381.04.

(Feb. 21, 1986, D.C. Law 6-85, § 816, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 10(c), 46DCR 2118.)

§ 2-308.17. Limitation of actions; burden of proof. [Transferred].

Recodified as § 2-381.05.

(Feb. 21, 1986, D.C. Law 6-85, § 817, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 10(d), 46 DCR 2118.)

§ 2-308.18. Remedies pursuant to other laws; severability of provisions; liberality of article construction. [Transferred].

Recodified as § 2-381.06.

(Feb. 21, 1986, D.C. Law 6-85, § 818, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687.)

§ 2-308.19. Civil investigative demands. [Transferred].

Recodified as § 2-381.07.

(Feb. 21, 1986, D.C. Act 6-85, § 819, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 10(e), 46 DCR 2118; Apr. 12, 2000, D.C. Law 13-91, § 122, 47 DCR 520.)

§ 2-308.20. Antifraud fund. [Transferred].

Recodified as § 2-381.08.

(Feb. 21, 1986, D.C. Law 6-85, § 820, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687.)

§ 2-308.21. Penalties for false representations. [Transferred].

Recodified as § 2-381.09.

(Feb. 21, 1986, D.C. Law 6-85, § 821, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687.)

Subchapter IX. Contract Appeals Board.

§ 2-309.01. Creation of Contract Appeals Board. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 901, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(aa), 44 DCR 1423; Oct. 19, 2000, D.C. Law 13-172, § 1702(a), 47 DCR 6308; Sept. 24, 2010, D.C. Law 18-223, § 1102, 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1189.1.

Emergency legislation. — For temporary (90-day) amendment of section, see § 1702(a) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 1702(a) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 1102 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 6-85. — For

legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-308.07.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 13-172. — For Law 13-172, see notes following § 2-301.04.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 2-218.76.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Short title. — Short title: Section 1101 of D.C. Law 18-223 provided that subtitle K of title I of the act may be cited as the “Contract Appeals Board Amendment Act of 2010”.

§ 2-309.02. Terms and qualifications of members. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 902, 32 DCR 7396; Oct. 7, 1987, D.C. Law 7-31, § 2, 34 DCR 3789; Apr. 12, 1997, D.C. Law 11-259, § 101(bb), 44 DCR 1423; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1189.2.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 7-31. — Law 7-31 was introduced in Council and assigned Bill No. 7-139, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 14, 1987 and May 5, 1987, respectively. Signed by the Mayor

on June 1, 1987, it was assigned Act No. 7-26 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-309.03. Jurisdiction of Board. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 903, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(cc), 44 DCR 1423; Oct. 19, 2000, D.C. Law 13-172, § 1702(b), 47 DCR 6308; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1189.3.

Emergency legislation. — For temporary (90-day) amendment of section, see § 1702(b) of the Fiscal Year 2001 Budget Support Emer-

gency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 1702(b) of the Fiscal Year 2001 Budget Support Congressional Review Emer-

gency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see His-

torical and Statutory Notes following § 2-301.01.

Legislative history of Law 13-172. — For Law 13-172, see notes following § 2-301.04.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-309.04. Contractor's right of appeal to Board. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 904, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(dd), 44 DCR 1423; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1189.4.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For

legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-309.05. Appeal of Board decisions. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 905, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1189.5.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-309.06. Oaths, discovery, and subpoena power. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 906, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1189.6.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-309.07. Actions in court; judicial review of Board decisions. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 907, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1189.7.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-309.08. Protest procedures. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 908, 32 DCR 7396; Apr. 12, 1997, D.C. Law 11-259, § 101(ee), 44 DCR 1423; May 8, 1998, D.C. Law 12-104, § 2(f), 45 DCR 1687; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1189.8.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(f) of the Procurement Reform Temporary Amendment Act of 1997 (D.C. Law 12-17, September 12, 1997, law notification 44 DCR 5459)

Emergency legislation. — For temporary amendment of section, see § 3(f) of the Procurement Reform Emergency Amendment Act of 1997 (D.C. Act 12-62, April 15, 1997, 44 DCR 2413), and see § 3(f) of the Procurement Reform Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-133, August 12, 1997, 44 DCR 4832).

For temporary amendment of section, see § 2(f) of the Procurement Reform Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338).

Legislative history of Law 6-85. — For

legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 12-104. — Law 12-104, the “Procurement Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-363, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on February 3, 1998, it was assigned Act No. 12-280 and transmitted to both Houses of Congress for its review. D.C. Law 12-104 became effective on May 8, 1998.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Subchapter X. Ethics in Public Contracting.

§ 2-310.01. Employees subject to Merit Personnel Act. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 1001, 32 DCR 7396; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1190.1.

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Subchapter X-A. South Africa Contracting Sanctions.

§ 2-310.01a. Application of subchapter. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 1001a, as added May 23, 1986, D.C. Law 6-116, § 2, 33 DCR 2432; June 28, 1994, D.C. Law 10-134, § 6(b), 41 DCR 2597.)

Prior Codifications. — 1981 Ed., § 1-1192.1.

Legislative history of Law 10-75. — For legislative history of D.C. Law 10-75, see Historical and Statutory Notes following § 2-301.07.

Legislative history of Law 10-134. — Law 10-134, the “South Africa Sanctions Repeal Act of 1994,” was introduced in Council and assigned Bill No. 10-427, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 1, 1994, and April 12,

1994, respectively. Signed by the Mayor on April 28, 1994, it was assigned Act No. 10-234 and transmitted to both Houses of Congress for its review. D.C. Law 10-134 became effective on June 28, 1994.

Editor’s notes. — Temporary repeal of subchapter: Section 8(b) of D.C. Law 10-75 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the South Africa Sanctions Repeal Act of 1993, whichever occurs first.

Temporary repeal of subchapter: Section 6(b) of D.C. Law 10-75 repealed this subchapter.

§ 2-310.01b. Definitions. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 1002a, as added May 23, 1986, D.C. Law 6-116, § 2, 33 DCR 2432; July 22, 1992, D.C. Law 9-127, § 6(b), 39 DCR 3828; June 28, 1994, D.C. Law 10-134, § 6(b), 41 DCR 2597.)

Prior Codifications. — 1981 Ed., § 1-1192.2.

Legislative history of Law 10-134. — For

legislative history of D.C. Law 10-134, see Historical and Statutory Notes following § 2-310.01a.

§ 2-310.01c. Determination of entities with business interests in Republic of South Africa. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 1003a, as added May 23, 1986, D.C. Law 6-116, § 2, 33 DCR 2432; July 22, 1992, D.C. Law 9-127, § 6(c), 39 DCR 3828; June 28, 1994, D.C. Law 10-134, § 6(b), 41 DCR 2597.)

Prior Codifications. — 1981 Ed., § 1-1192.3.

Legislative history of Law 10-134. — For

legislative history of D.C. Law 10-134, see Historical and Statutory Notes following § 2-310.01a.

§ 2-310.01d. Sanctions. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 1004a, as added May 23, 1986, D.C. Law

6-116, § 2, 33 DCR 2432; July 22, 1992, D.C. Law 9-127, § 6(d), 39 DCR 3828; June 28, 1994, D.C. Law 10-134, § 6(b), 41 DCR 2597.)

Prior Codifications. — 1981 Ed., § 1-1192.4. legislative history of D.C. Law 10-134, see Historical and Statutory Notes following § 2-310.01a.

Legislative history of Law 10-134. — For

§ 2-310.01e. Notice and affidavit requirements. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 1005a, as added May 23, 1986, D.C. Law 6-116, § 2, 33 DCR 2432; July 22, 1992, D.C. Law 9-127, § 6(e), 39 DCR 3828; June 28, 1994, D.C. Law 10-134, § 6(b), 41 DCR 2597.)

Prior Codifications. — 1981 Ed., § 1-1192.5. legislative history of D.C. Law 10-134, see Historical and Statutory Notes following § 2-310.01a.

Legislative history of Law 10-134. — For

§ 2-310.01f. Rules. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 1006a, as added May 23, 1986, D.C. Law 6-116, § 2, 33 DCR 2432; June 28, 1994, D.C. Law 10-134, § 6(b), 41 DCR 2597.)

Prior Codifications. — 1981 Ed., § 1-1192.6. legislative history of D.C. Law 10-134, see Historical and Statutory Notes following § 2-310.01a.

Legislative history of Law 10-134. — For

Subchapter XI. Miscellaneous.

§ 2-311.01. Procurement training programs. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 1101, 32 DCR 7396; Mar. 20, 1998, D.C. Law 12-60, § 201, 44 DCR 7378; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1191.1. § 201(a) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 201 of the Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

Emergency legislation. — For temporary amendment of section, see § 201 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196).

For temporary amendment of section, see

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 12-60. — Law 12-60, the “Fiscal Year 1998 Revised Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, re-

spectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Legislative history of Law 18-371. — For

history of Law 18-371, see notes under § 2-301.01.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 2-311.02. Cooperative purchasing agreement. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 1102, 32 DCR 7396; Dec. 9, 2003, D.C. Law 15-42, § 2, 50 DCR 8959; Apr. 7, 2006, D.C. Law 16-91, § 130(f), 52 DCR 10637; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 1981 Ed., § 1-1191.2.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the Cooperative Purchasing Agreement Temporary Amendment Act of 2001 (D.C. Law 14-59, January 24, 2002, law notification 49 DCR 988).

For temporary (225 day) amendment of section, see § 2 of the Cooperative Purchasing Agreement Temporary Amendment Act of 2002 (D.C. Law 14-242, March 25, 2003, law notification 50 DCR 2755).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Cooperative Purchasing Agreement Emergency Amendment Act of 2001 (D.C. Act 14-111, August 3, 2001, 48 DCR 7636).

For temporary (90 day) amendment of section, see § 2 of Cooperative Purchasing Agreements Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-179, November 19, 2001, 48 DCR 11063).

For temporary (90 day) amendment of section, see § 2 of Cooperative Purchasing Agreement Emergency Amendment Act of 2002 (D.C. Act 14-518, October 24, 2002, 49 DCR 10504).

For temporary (90 day) amendment of section, see § 2 of Cooperative Purchasing Agree-

ment Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-11, January 27, 2003, 50 DCR 1483).

For temporary (90 day) amendment of section, see § 2 of Cooperative Purchasing Agreement Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-227, November 25, 2003, 50 DCR 10712).

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 15-42. — Law 15-42, the "Cooperative Purchasing Agreements Amendment Act of 2003", was introduced in Council and assigned Bill No. 15-54, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 8, 2003, and September 16, 2003, respectively. Signed by the Mayor on October 6, 2003, it was assigned Act No. 15-155 and transmitted to both Houses of Congress for its review. D.C. Law 15-42 became effective on December 9, 2003.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 2-218.54.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

§ 2-311.03. District of Columbia Supply Schedule and Purchase Card Fund. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 1103, as added Nov. 13, 2003, D.C. Law 15-39, § 802, 50 DCR 5668; Mar. 3, 2010, D.C. Law 18-111, § 1181, 57 DCR 181; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Emergency legislation. — For temporary (90 day) addition, see § 802 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) addition, see § 802 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) amendment of section, see § 1181 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 1181 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 15-39. — Law 15-39, the “Fiscal Year 2004 Budget Support Act of 2003”, was introduced in Council and assigned Bill No. 15-218, which was referred to Committee on Whole. The Bill was adopted on first and second readings on May 6, 2003, and June 3, 2003, respectively. Signed by the Mayor on June 20, 2003, it was assigned Act No. 15-106 and transmitted to both Houses of Con-

gress for its review. D.C. Law 15-39 became effective on November 13, 2003.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 2-218.50.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-301.01.

Short title. — Short title of title VIII of Law 15-39: Section 801 of D.C. Law 15-39 provided that title VIII of the act may be cited as the District of Columbia Supply Schedule Sales Discount and Operating Fund Amendment Act of 2003.

Short title: Section 1180 of D.C. Law 18-111 provided that subtitle S of title I of the act may be cited as the “District of Columbia Supply Schedule and Purchase Card Fund Amendment Act of 2009”.

Subchapter XII. Electronic Commerce; Acquisition and Disposition.

§ 2-312.01. Electronic transactions. [Transferred].

Recodified as § 2-381.21.

(Feb. 21, 1986, D.C. Law 6-85, § 1201, as added Oct. 22, 2009, D.C. Law 18-64, § 2(f), 56 DCR 6603.)

§ 2-312.02. Electronic procurement. [Transferred].

Recodified as § 2-381.22.

(Feb. 21, 1986, D.C. Law 6-85, § 1202, as added Oct. 22, 2009, D.C. Law 18-64, § 2(f), 56 DCR 6603.)

§ 2-312.03. Electronic auctions. [Transferred].

Recodified as § 2-381.23.

(Feb. 21, 1986, D.C. Law 6-85, § 1203, as added Oct. 22, 2009, D.C. Law 18-64, § 2(f), 56 DCR 6603.)

Unit B. General.

Subchapter I. Deadline for Appointment of Inspector General.

§ 2-321.01. Deadline for appointment of Inspector General. [Transferred].

Recodified as §. 1-301.115b.

(Apr. 17, 1995, 109 Stat. 151, Pub. L. 104-8, § 303(e); Aug. 5, 1997, 111 Stat. 782, Pub. L. 105-33, § 11711(b).)

*Subchapter II. Year 2000 District Government Computer
Liability Immunity.*

§ 2-323.01. Immunity for Year 2000 system failures. [Transferred].

Recodified as § 2-381.31.

(Apr. 20, 1999, D.C. Law 12-244, § 2, 46 DCR 1080.)

§ 2-323.02. Applicability. [Transferred].

Recodified as § 2-381.32.

(Apr. 20, 1999, D.C. Law 12-244, § 3, 46 DCR 1080.)

Subchapter III. Miscellaneous.

§ 2-325.01. New contracts with costs exceeding existing contracts. [Transferred].

Recodified as § 2-381.41.

(Sept. 26, 1995, D.C. Law 11-52, § 816, 42 DCR 3684.)

§ 2-325.02. Privatization of Fleet Management Services in the Metropolitan Police Department.

Recodified as § 2-381.42.

(Sept. 26, 1995, D.C. Law 11-52, § 701, 42 DCR 3684.)

§ 2-325.03. Standards for contracting officer.

Recodified as § 2-381.43.

(Mar. 5, 1996, D.C. Law 11-98, § 501(c), 43 DCR 5.)

§ 2-325.04. Establishment of grading system for businesses contracting with the District. [Repealed].

Repealed.

(Mar. 26, 2008, D.C. Law 17-137, § 2, 55 DCR 1687; Apr. 8, 2011, D.C. Law 18-371, § 1201(b), 58 DCR 1185.)

Legislative history of Law 17-137. — Law 17-137, the “Excellence in Local Business Contract Grading Act of 2008”, was introduced in Council and assigned Bill No. 17-336 which was referred to the Committee on Economic Development.

The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on February 5, 2008, it was assigned Act No. 17-288 and transmitted to both Houses of

Congress for its review. D.C. Law 17-137 became effective on March 26, 2008.

Legislative history of Law 18-371. — For

history of Law 18-371, see notes under § 2-351.01

§ 2-325.05. Rules for § 2-325.04. [Repealed].

Repealed.

(Mar. 26, 2008, D.C. Law 17-137, § 3, 55 DCR 1687; Apr. 8, 2011, D.C. Law 18-371, § 1201(b), 58 DCR 1185.)

Legislative history of Law 17-137. — For Law 17-137, see notes following § 2-325.04.

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01

Delegation of Authority. — Delegation of Authority under D.C. Law 17-137, the “Excellence in Local Business Contract Grading Act of 2008”, see Mayor’s Order 2009-8, January 29, 2009 (56 DCR 2025).

Subchapter IV. Repealed and Expired Provisions.

§ 2-327.01. Creation of Chief Information Officer position; duties. [Repealed].

Repealed.

(Jan. 26, 1996, D.C. Law 11-78, § 1001, 42 DCR 6181; Mar. 5, 1996, D.C. Law 11-98, § 801, 43 DCR 5; Mar. 26, 1999, D.C. Law 12-175, § 502, 45 DCR 7193.)

Prior Codifications. — 1981 Ed., § 1-1182.9.

Emergency legislation. — For temporary repeal of section, see § 302 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 302 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary (90-day) repeal of section, see § 302 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 1-1181.5.

§ 2-327.02. Fire and Emergency Medical Services Department small purchase authority [Expired].

Expired.

(Mar. 26, 1999, D.C. Law 12-175, § 1602, 45 DCR 7193.)

Prior Codifications. — 1981 Ed., § 1-1182.22.

Emergency legislation. — For temporary amendment of D.C. Act 12-401 by adding a new § 1204, see § 4 of Fiscal Year 1999 Budget Support Emergency Amendment Act of 1998 (D.C. Act 12-480, October 28, 1999, 45 DCR 8016).

For temporary amendment of D.C. Law 12-175 by adding a new § 1604, see § 5 of Fiscal

Year 1999 Budget Support Emergency Amendment Act of 1998 (D.C. Act 12-480, October 28, 1999, 45 DCR 8016); and § 5 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-4, February 8, 1999, 46 DCR 2291).

For temporary addition of section, see § 1202 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794) and § 1202 of the Fiscal

Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, 46 DCR 669).

Section 1204 of D.C. Act 12-564 provided this title shall expire on September 30, 1999.

Section 2101 of D.C. Act 12-564 provided for the application of the act.

For temporary (90-day) addition of section, see § 1202 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 1-1181.5.

Short title. — Fire and Emergency Medical Services Department Small Purchase Authority Act: Section 1601 of D.C. Law 12-175 provided that this title may be cited as the “Fire and Emergency Medical Services Department Small Purchase Authority Act of 1998.”

§ 2-327.03. Expiration [Expired].

Expired.

(Mar. 26, 1999, D.C. Law 12-175, § 1604, as added Apr. 27, 1999, D.C. Law 12-267, § 4, 46 DCR 960.)

Cross references. — Contracts, late payments and interest penalties, rules and regulations, see § 2-221.02.

Eastern market community advisory committee, see § 37-111.

Eastern market real property asset management, market manager, see § 37-105.

Licensure, non-health related occupations, boards, staffing and administration, see § 47-2853.10.

Mental health services, client enterprise program, establishment, see § 44-921.

Merit personnel system, classification and compensation, tax-favored and pre-tax benefits programs, see § 1-611.19.

Merit personnel system, health benefits, contracting for provision of health benefits, see § 1-621.04.

Merit personnel system, retirement, contracting for services, see § 1-626.06.

Substance abuse, prevention programs, financial assistance, see § 44-1205.

Tenant assistance program, contracts, participation applications and eligibility, see § 42-3503.03.

Washington metropolitan area transit authority, joint state oversight agency, procurement law inapplicable, see § 9-1109.06.

Prior Codifications. — 1981 Ed., § 1-1183.23.

Legislative history of Law 12-267. — Law 12-267, the “Closing of a Public Alley in Square 371, S.O. 96-202, Act of 1998,” was introduced in Council and assigned Bill No. 12-800, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-576 and transmitted to both Houses of Congress for its review. D.C. Law 12-267 became effective on April 27, 1999.

Editor's notes. — Temporary amendment of D.C. Law 12-175: Section 5 of D.C. Law 12-211 amended D.C. Law 12-175 by adding a new § 1604 codified as § 1-1183.23.

Section 9(b) of D.C. Law 12-211 provided that the act shall expire after 225 days of its having taken effect.

CHAPTER 3A. GOVERNMENT PROCUREMENT.

Subchapter I. General Provisions

Sec.

- 2-351.01. Purposes and policies.
- 2-351.02. Supplementary general principles of law applicable.
- 2-351.03. Obligation of good faith.
- 2-351.04. Definitions.
- 2-351.05. Application; exemptions.

Subchapter II. Procurement Organization

- 2-352.01. Office of Contracting and Procurement; authority.
- 2-352.02. Criteria for Council review of multi-year contracts and contracts in excess of \$1 million.
- 2-352.03. Office of Contracting and Procurement.
- 2-352.04. Duties of the Chief Procurement Officer.
- 2-352.05. Privatization contracts and procedures requirements.
- 2-352.06. Procurement training institute. [Not funded].

Subchapter III. Contractor Standards

- 2-353.01. Contractor standards.
- 2-353.02. Determination of contractor responsibility.

Subchapter IV. Source Selection and Contract Formation

- 2-354.01. Source selection methods.
- 2-354.02. Competitive sealed bids.
- 2-354.03. Competitive sealed proposals.
- 2-354.04. Sole source procurements.
- 2-354.05. Emergency procurements.
- 2-354.06. Human care procurements.
- 2-354.07. Small purchase procurements.
- 2-354.08. Special pilot procurements.
- 2-354.09. Auctions.
- 2-354.10. General Services Administration schedules.
- 2-354.11. Cooperative purchasing.
- 2-354.12. District of Columbia Supply Schedule.
- 2-354.13. Competition exemptions.
- 2-354.14. Cancellation of solicitations.
- 2-354.15. Collusion.
- 2-354.16. Contingent fees.
- 2-354.17. Confidentiality.
- 2-354.18. Right to audit records; right to inspect.
- 2-354.19. Reasonable prices.
- 2-354.20. Prequalification.

Subchapter V. Types of Contracts

- 2-355.01. Cost-plus-a-percentage-of-cost contract prohibited.

Sec.

- 2-355.02. Cost-reimbursement contracts.
- 2-355.03. Use of other types of contracts.
- 2-355.04. Multiyear contracts.

Subchapter VI. Procurement of Construction Projects and Related Services

- 2-356.01. Project delivery methods authorized.
- 2-356.02. Source selection methods assigned to project delivery methods.
- 2-356.03. Prequalification process for construction.
- 2-356.04. Architectural and engineering services.

Subchapter VII. Bonds and Other Forms of Security

- 2-357.01. Bid security in construction contracts.
- 2-357.02. Contract performance and payment bonds in construction contracts.
- 2-357.03. Bond forms and copies.
- 2-357.04. Other forms of security.
- 2-357.05. Authority to require bonds.
- 2-357.06. Fiscal responsibility.

Subchapter VIII. Supply Management

- 2-358.01. Supply management rules.
- 2-358.02. Disposition of surplus goods.
- 2-358.03. Electronic Inventory Control System. [Not funded].
- 2-358.04. [Repealed].

Subchapter IX. Prohibited Actions; Remedies

- 2-359.01. Oral agreements.
- 2-359.02. Improper contracts.
- 2-359.03. Termination of contracts.
- 2-359.04. Sovereign immunity defense not available.
- 2-359.05. District government not liable for punitive damages.
- 2-359.06. Claims by District government against contractors.
- 2-359.07. Debarment and suspension.
- 2-359.08. Claims by contractors against the District government.
- 2-359.09. Interest.
- 2-359.10. Employees subject to employee conduct standards of Merit Personnel Act.

Subchapter X. Contract Appeals Board

- 2-360.01. Creation of Contract Appeals Board.
- 2-360.02. Terms and qualifications of members.
- 2-360.03. Jurisdiction of Board.
- 2-360.04. Contractor's right of appeal to Board.
- 2-360.05. Appeal of Board decisions.

Sec. 2-360.06. Oaths, discovery, and subpoena power.	Sec. 2-361.03. Supply schedule, purchase card, and training funds.
2-360.07. Actions in court; judicial review of Board decisions.	2-361.04. Transparency in contracting.
2-360.08. Protest procedures.	2-361.05. Acquisition planning.
	2-361.06. Rules.
<i>Subchapter XI. Miscellaneous Provisions</i>	<i>Subchapter XII. Repealed Provisions; Transfers and Continuation</i>
2-361.01. Green procurement. [Not funded].	2-362.01. [Reserved].
2-361.02. Payment of stipends authorized.	2-362.02. Transfers and continuation.
	2-362.03. Applicability.

Subchapter I. General Provisions.

§ 2-351.01. Purposes and policies.

(a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) In enacting this chapter, the Council supports the following statutory purposes:

(1) To simplify, clarify, and modernize the law governing the procurement of goods, services, and construction items by the District government;

(2) To foster effective and equitably broad-based competition in the District by supporting the free enterprise system and the certified business enterprise program as set forth in subchapter IX-A of Chapter 2 of this title [§ 2-218.01 et seq.], and its implementing rules;

(3) To obtain full and open competition by providing that contractors are given adequate opportunities to bid;

(4) To ensure the fair and equitable treatment of all persons who deal with the procurement system of the District government;

(5) To increase public confidence in the procedures followed in public procurement;

(6) To promote efficiency and eliminate duplication in the District government procurement organization and operation to reduce costs;

(7) To provide increased economy in procurement activities and maximize, to the fullest extent practicable, the purchasing power of the District government;

(8) To permit the continued development of procurement laws, policies, and practices;

(9) To provide for timely, effective, and efficient service to District agencies and individuals doing business with the District government;

(10) To promote the development of uniform procurement procedures District government-wide;

(11) To improve the understanding of procurement laws and policies within the District government by organizations and individuals doing business with the District government; and

(12) To promote, to the maximum extent feasible, the purchase of environmentally preferable products and services.

(Apr. 8, 2011, D.C. Law 18-371, § 101, 58 DCR 1185.)

Cross references. — Eastern market real property asset management and outdoor vending, contract with nonprofit association or corporation to operate farmers' market, see § 37-105.

Mental Health Services Client Enterprise Program, exception from the provisions of this chapter, see § 44-921.

Non-health related occupations and professions licensure, staffing and administration of licensure boards, contracts for support services, see § 47-2853.10.

Prior Codifications. — 2001 Ed., § 2-301.01.

Legislative history of Law 18-371. — Law 18-371, the "Procurement Practices Reform Act of 2010", was introduced in Council and assigned Bill No. 18-610, which was referred to the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on November 23, 2010, and December 7, 2010, respectively. Signed by the Mayor on February 3, 2011, it was assigned Act No. 18-723 and transmitted to both Houses of Congress for its review. D.C. Law 18-371 became effective on April 8, 2011.

CASE NOTES

ANALYSIS

In general.

Judicial review of administrative decisions—In general.

—Exhaustion of administrative remedies, judicial review of administrative decisions.

—Standing, judicial review of administrative decisions.

In general.

Contractor was collaterally estopped from claiming that District of Columbia Procurement Practices Act violated District of Columbia Self-Government and Governmental Reorganization Act where same constitutional issue had been asserted and rejected in earlier District of Columbia litigation between parties. D.C. Code 1981, §§ 1-1181.1 et seq., 1-201 to 1-299.7. *Dano Resource Recovery v. District of Columbia*, 923 F. Supp. 249, 1996 U.S. Dist. LEXIS 5470 (1996), affirmed by 1997 U.S. App. LEXIS 6001 (D.C. Cir. Feb. 27, 1997).

A person making or seeking to make a contract with the District of Columbia is charged with knowledge of the limits of the agency's or its agent's actual authority. *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

Procurement Practices Act supersedes any authority Mayor otherwise might have to appeal Contract Appeals Board's (CAB) bid protest decision. D.C. Code 1981, §§ 1-227, 1-242, 1-361, 1-1181.1 et seq. *Francis v. Recycling Solutions*, 695 A.2d 63, 1997 D.C. App. LEXIS 138 (1997).

Board of Contract Appeals' application of rule requiring appellant, who in all cases was a contractor, from decision of Director of Department of Administrative Services to file complaint setting forth its claims was unreasonable where District of Columbia was party asserting claims. D.C. Code 1981, §§ 1-1181.1 et seq., 1-1189.3. *Fry & Welch Assocs., P.C. v. District of Columbia Contract Appeals Bd.*, 664 A.2d 1230, 1995 D.C. App. LEXIS 177 (1995).

Procurement Practices Act lacked authority to alter existing jurisdiction of superior court, where Act was enacted by council of District of Columbia, not initiated by Congress. D.C. Code 1981, §§ 1-233(a)(4), 1-1181.1 to 1-1192.6, 1-921. *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Judicial review of administrative decisions—In general.

Subcontractor could not collaterally attack in federal court implicit rejection in District of Columbia Court of Appeals of its request for trial de novo on dispute related to contract subject to determination by Contract Appeals Board (CAB) or its assertion that CAB lacked jurisdiction to hear appeal from administrative determination in first instance. D.C. Code 1981, §§ 1-1181.1 et seq., 1-201 to 1-299.7. *Dano Resource Recovery v. District of Columbia*, 923 F. Supp. 249, 1996 U.S. Dist. LEXIS 5470 (1996), affirmed by 1997 U.S. App. LEXIS 6001 (D.C. Cir. Feb. 27, 1997).

Evidence supporting a decision of the District of Columbia Contract Appeals Board is "substantial," for purposes of review on appeal, when a reasonable mind might accept it as adequate to support a conclusion. *Belcon Inc. v. D.C. Water & Sewer Auth.*, 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

So long as a finding of the District of Columbia Contract Appeals Board is supported by substantial evidence, the Court of Appeals must accept it, even though there may also be substantial evidence in the record to support a contrary finding. *Belcon Inc. v. D.C. Water & Sewer Auth.*, 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

The Court of Appeals' review of legal rulings of the District of Columbia Contract Appeals Board is de novo, for it is emphatically the province and duty of the judicial department to say what the law is. *Belcon Inc. v. D.C. Water & Sewer Auth.*, 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

Court of Appeals accords “great weight” to the District of Columbia Contract Appeals Board’s construction of a government contract, so long as that construction is not unreasonable. *Belcon Inc. v. D.C. Water & Sewer Auth.*, 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

The Court of Appeals had power under the All Writs Act to issue preliminary injunction against arbitration of dispute over government contract; appellate jurisdiction was implicated in the ultimate resolution of the issues of arbitrability and the jurisdiction of the Contract Appeals Board (CAB) to decide, in the first instance, the arbitrability of contract disputes under the District of Columbia Procurement Practices Act (PPA). *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

Court of Appeals could not consider whether District of Columbia Procurement Practices Act (DCPPA) could retroactively confer jurisdiction on Director of Department of Administrative Services to decide District of Columbia’s breach of contract claims against contractor where Board of Contract Appeals’ did not consider jurisdictional issue. D.C. Code 1981, § 1-1181.1 et seq. *Fry & Welch Assocs., P.C. v. District of Columbia Contract Appeals Bd.*, 664 A.2d 1230, 1995 D.C. App. LEXIS 177 (1995).

Superior court had jurisdiction to review Contract Appeals Board’s (CAB) decisions in bid protest, and thus, superior court also possessed power under All Writs Act to issue temporary relief to disappointed bidder, even though CAB had not yet issued decision. D.C. Code 1981, §§ 1-233(a)(4), 1-1181.1 to 1-1192.6, 1-1189.3, 1-1502(8), 1-1510(a), 11-921; 18 U.S.C. §§ 1651, 1651(a). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

— **Exhaustion of administrative remedies, judicial review of administrative decisions.**

Failure of District of Columbia Contract Appeals Board to set hearing date after nearly four years did not establish futility or inade-

quacy of administrative remedy and did not excuse contractor from requirement to exhaust administrative remedies; contractor made no showing that Board was unwilling to consider claims or that it was predisposed to find against contractor; and Board was busy overseeing discovery and ruling on parties’ various motions. D.C. Code 1981, § 1-1181.1 et seq. *Dano Resource Recovery v. District of Columbia*, 566 A.2d 483, 1989 D.C. App. LEXIS 234 (1989).

Absent clear indication to contrary, District of Columbia Procurement Practices Act and its provision for exhaustion of administrative remedies before judicial review was sought applied to contracts entered into before Act’s effective date, notwithstanding contractor’s contention that Act provision pursuant to which no procurement rule or regulation was to change any preexisting contract commitment reflected such contrary intent. D.C. Code 1981, §§ 1-1182.5(c), 1-1188.5. *Dano Resource Recovery v. District of Columbia*, 566 A.2d 483, 1989 D.C. App. LEXIS 234 (1989).

— **Standing, judicial review of administrative decisions.**

Unsuccessful bidder, in claiming that District of Columbia failed to follow proper procedures in evaluating its proposals and awarding contract to service provider that did not meet District’s standards for integrity, was seeking to protect interest in fair competition and integrity that lay at heart of Procurement Practices Act, and thus, unsuccessful bidder satisfied zone of interest requirement for standing to seek relief in superior court. D.C. Code 1981, § 1-1181.1(b). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Although disappointed bidder’s challenge to government’s procurement process served public interest in fair and efficient government, bidder’s grievance was also particularized as required for standing, insofar as bidder was seeking procurement contract. D.C. Code 1981, § 1-1181.1(b). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

§ 2-351.02. Supplementary general principles of law applicable.

Unless superseded by the particular provisions of this chapter, the principles of law and equity, including subtitle I of Title 28 of the District of Columbia Official Code, and laws relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy, shall supplement the provisions of this chapter.

(Apr. 8, 2011, D.C. Law 18-371, § 102, 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-351.02. history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 18-371. — For

§ 2-351.03. Obligation of good faith.

Every contract or duty within this chapter imposes an obligation of good faith in its performance or enforcement. For purposes of this chapter, the term “good faith” means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

(Apr. 8, 2011, D.C. Law 18-371, § 103, 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-351.03. history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 18-371. — For

§ 2-351.04. Definitions.

For the purposes of this chapter, the term:

(1) “Affiliate” means any business in which:

(A) A suspended or debarred person is an officer or has a substantial financial interest and any business that has a substantial direct or indirect ownership interest in the suspended or debarred business; or

(B) A suspended or debarred business has a substantial direct or indirect ownership interest.

(2) “Agency” means any agency, employee, or instrumentality of the District government.

(3) “Architectural and engineering services” means:

(A) Professional services of an architectural or engineering nature:

(i) Which are required to be performed or approved by a person licensed, registered, or certified to provide the services as described in this paragraph; or

(ii) Performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property.

(B) Other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

(4) “Bid bond” means a form of security assuring that the bidder will not withdraw a bid within the period specified for acceptance and will execute a written contract within the time specified in the bid.

(5) “Bid price” means the dollar value of a price offering submitted in response to an Invitation for Bids.

(6) “Bidder” means any person who submits a price offering in response to an Invitation for Bids.

(7) “Bond” means a written instrument executed by a contractor (principal) and a second party (surety) to assure fulfillment of the contractor’s obligations to a third party (obligee or the District). If the principal’s obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee.

(8) “Business” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted.

(9) “Change order” means a written order signed by the contracting officer, directing the contractor to make changes which the changes clause of the contract authorizes the contracting officer to order without the consent of the contractor.

(10) “Chief Financial Officer” or “CFO” means the Chief Financial Officer of the District of Columbia.

(11) “Chief Procurement Officer” or “CPO” means the director of the Office of Contracting and Procurement established by § 2-352.01.

(12) “Competitive sealed proposals” means a process which includes the submission of written technical and price proposals from one or more offerors and a written evaluation of each proposal in accordance with evaluation criteria which consider price, quality of the items, performance, and other relevant factors.

(13) “Construction” means the process of building, altering, repairing, improving, or demolishing any public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real property. The term “construction” shall not include the routine operation, routine repair, or routine maintenance of an existing public infrastructure facility, including structures, buildings, or real property.

(14) “Construction management at-risk” means a project delivery method in which the purchasing agency awards a construction management services contract for a project to a single firm, based on qualifications, and under which contract the construction manager shall deliver the project within the GMP.

(15) “Contract modification” means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract.

(16) “Contracting officer” means the Mayor, the CPO, or the CPO’s designee vested with the authority to execute contracts on behalf of the District or otherwise bind the District in compliance with the provisions of this chapter.

(17) “Contractor” means a person that enters into a contract with the District.

(18) “Cooperative purchasing” means a procurement conducted by the District government with, or on behalf of, any government or public entity, including a state, county, or municipal jurisdiction or the Federal government.

(19) “Cost-plus incentive fee contract” means a type of contract that specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula.

(20) "Cost-reimbursement contract" means a contract under which the District reimburses the contractor for those contract costs, within a stated ceiling, which are recognized as allowable and allocated in accordance with cost principles, and a fee, if any.

(21) "Default Environmental Preference Standard" shall mean materials, supplies, services, or commodities that:

(A) Are available through the most current version of the GSA Environmental Specialty Category; or

(B) Meet or exceed applicable performance standards or requirements of:

(i) The Federal Energy Management Program;

(ii) The Electronic Products Environmental Assessment Tool Bronze rating;

(iii) The U.S. Department of Energy's ENERGY STAR program;

(iv) The U.S. Environmental Protection Agency's Comprehensive Procurement Guidelines; or

(v) Verification of a project under the Leadership in Energy and Environmental Design green building rating systems designed by the United States Green Building Council.

(22) "Definitive contract" means the contract executed pursuant to the letter contract commitment.

(23) "Design-bid-build" means a project delivery method in which the purchasing agency sequentially awards separate contracts, the 1st for architectural and engineering services to design the project and the 2nd for construction of the project according to the design.

(24) "Design-build" means a project delivery method in which the purchasing agency enters into a single contract for design and construction of an infrastructure facility.

(25) "Design-build-finance-operate-maintain" means a project delivery method in which:

(A) The purchasing agency enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period; and

(B) No District funds are appropriated to pay for any part of the services provided by the contractor during the contract period.

(26) "Design-build-operate-maintain" means a project delivery method in which:

(A) The purchasing agency enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period; and

(B) All or a portion of the funds required to pay for the services provided by the contractor during the contract period are:

(i) Either appropriated by the District prior to award of the contract; or

(ii) Generated by the District through fare, toll, or user charges.

(27)(A) "Design requirements" means the written description of the infrastructure facility or service to be procured under this chapter, including:

(i) Required features, functions, characteristics, qualities, and properties that are required by the District;

(ii) The anticipated schedule, including start, duration, and completion; and

(iii) Estimated budgets (as applicable to the specific procurement) for design, construction, operation and maintenance.

(B) The written description may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the infrastructure facility or service.

(28) “Determinations and findings” means a form of written approval and detailed explanation as a prerequisite to taking certain contract actions, including the rationale for the method of procurement, the selection of contract type, contractor selection, and the basis for contract price.

(29) “District of Columbia Supply Schedule” or “DCSS” means the District of Columbia’s multiple award schedule or other procurement program under which contracts may be awarded to certified business enterprises, as defined in § 2-218.02(1B), providing goods, services, or construction to District government agencies.

(30) “Environmentally Preferable Product or Service” or “EPPS” means a good or service that is less harmful to human health and the environment when compared with competing goods or services that serve the same purpose. The factors to be compared include raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

(31) “Evaluated bid price” means the dollar amount of a bid after bid price adjustments are made under objective measurable criteria, set forth in the Invitation for Bid, which affect the economy and effectiveness in the operation or use of the product, including the reliability, maintainability, useful life, and residual value.

(32) “Fixed-price contract” means a contract where the price is not subject to any adjustment on the basis of the contractor’s cost experience in the performance of the contract.

(33) “Fixed-price incentive contract” means a contract that:

(A) Provides for adjusting profit; and

(B) Subject to a ceiling, establishes the final contract price by a formula based on the relationship of final negotiated price to total target cost.

(34) “Fully allocated cost” means the total direct and indirect costs of providing a good, service, or function. The term “fully allocated cost” includes:

(A) Direct personal services costs, including wages, salaries, and fringe benefits;

(B) Non-personal services costs including materials, goods, equipment, maintenance and repairs, utilities, insurance, travel, and capital and equipment depreciation cost; and

(C) General and administrative overhead.

(35) “Goods” means all personal property, tangible or intangible.

(36) “Guaranteed Maximum Price” or “GMP” means an amount beyond which the District government is not obligated to compensate a contractor.

(37) “Human care agreement” means a written agreement for the procurement of education, special education, health, human, or social services, pursuant to § 2-354.06, to be provided directly to individuals who have disabilities or are disadvantaged, displaced, elderly, indigent, mentally ill, physically ill, unemployed, or minors in the custody of the District.

(38) “Invitation for Bids” means all documents, including documents attached or incorporated by reference, used for soliciting bids pursuant to § 2-354.02.

(39) “Letter contract” means a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing or delivering goods or performing services prior to the execution of a definitive contract.

(40) “Machine-readable and searchable” means electronic text that is stored as strings of characters and that can be displayed in a variety of formats.

(41) “Negotiation” means discussions to determine the terms and conditions of a contract or procurement.

(42) “OCP” means the Office of Contracting and Procurement established by § 2-352.01.

(43) “Offeror” means any person who submits a technical and price proposal in response to a Request For Proposals or a response to a Request For Qualifications.

(44) “Operations and maintenance” means a project delivery method whereby the purchasing agency enters into a single contract for the routine operation, routine repair, and routine maintenance of an infrastructure facility.

(45) “Payment bond” means a bond to assure payment to all persons supplying labor or material in the performance of the work provided in the contract.

(46) “Performance bond” means a bond to secure performance and fulfillment of the contractor’s obligations under the contract.

(47) “Privatization contract” means a contract by which the District government enters into an agreement with a person who is not part of the District government to provide a good or service to or on behalf of the District government that is being provided by a District government agency or instrumentality.

(48) “Procurement” means buying, purchasing, renting, leasing, or otherwise acquiring any goods, services, or construction.

(49) “Proposal development” means documents, drawings, and other design-related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical, and electrical systems, materials, and other elements as may be appropriate to the applicable project delivery method.

(50) “Public notice” means the distribution or dissemination of information to interested parties using methods that are reasonably available. Methods may include publication in newspapers, electronic or paper mailing lists, and websites designated by the District; provided, that competitive

sealed bids pursuant to § 2-354.02 and competitive sealed proposals pursuant to § 2-354.03 for any solicitation in excess of \$250,000 shall include publication in a newspaper of general circulation and in trade publications considered to be appropriate by the CPO to give adequate public notice.

(51) "Purchase Card Program" means the credit card program under which agencies are authorized to make purchases for goods or services.

(52) "Request for Proposals" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting proposals pursuant to § 2-354.03.

(53) "Request for Qualifications" or "RFQ" means a written document inviting prospective contractors to submit a statement of their qualifications to provide certain goods or services.

(54) "Reverse auction" means an online procurement method whereby pre-qualified suppliers compete with one another to provide a good or service, typically commodities, to a buyer or group of buyers.

(55) "Responsible" or "responsibility" means that a prospective contractor has been determined, under § 2-353.02, to have the necessary capacity to perform in accordance with the terms and conditions of the contract.

(56) "Responsive bidder or offeror" means a person who has submitted a bid or offer which conforms in all material respects to the solicitation.

(57) "Sanitize" means the process of removing data from a media source before the item is reused in an environment that does not provide an acceptable level of protection for the data.

(58) "Services" means the furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. The term "services" shall not include the furnishing of time, labor, or effort pursuant to employment agreements or collective bargaining agreements.

(59) "Sole source" means that a single source in a competitive marketplace can fulfill the specifications of a contract.

(60) "Source selection" means the process of soliciting a bidder or offeror for the awarding of a contract and the subsequent evaluative process, based on established award criteria, delineated in the solicitation document.

(61) "Special education services" means the services defined in 34 C.F.R. § 300.24.

(62) "Specification" means any description of physical or functional characteristics or of the nature of a good, service, or construction item. The term "specification" includes a description of any requirement for inspecting, testing, or preparing a good, service, or construction item for delivery.

(63) "Statement of qualifications" means a written document, submitted to OCP by a prospective contractor wishing to obtain a District government contract, which sets forth the prospective contractor's qualifications as requested by the CPO.

(64) "Surety" means a business legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation.

(65) "Surplus goods" means any goods no longer having any use to the District. The term "surplus goods" includes obsolete goods, scrap materials, and nonexpendable goods that have completed their useful life cycle.

(66) “Surplus Property Fund” means the District of Columbia Surplus Property Sales Revolving Fund established by § 2-358.04 [repealed].

(67) “Term contract” means a contract established for a period of time for bulk purchase of goods commonly used by the District.

(68) “Voucher” means a written authorization to a human care agreement service provider to provide the services authorized in the agreement to an individual identified in the agreement.

(69) “Written” or “in writing” means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored, other electronic media, and digital files.

(Apr. 8, 2011, D.C. Law 18-371, § 104, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-351.05. Application; exemptions.

(a) Except as provided in this section, this chapter shall apply to all subordinate agencies, instrumentalities, and employees of the District government, independent agencies, boards, and commissions.

(b) Only §§ 2-351.02, 2-351.03, 2-351.04, and subchapters III, IV, V, VII, IX, X, XI, and XII of this chapter shall apply to the Council. The duties of the CPO shall be exercised by the Council for the purposes of the application of those sections and subchapters to the Council. Notwithstanding § 2-352.01, the Mayor or the CPO shall not have the authority to monitor, review, or establish standards, procedures, regulations, or rules for contracts or procurements of the Council, unless authorized by the Council.

(c) This chapter shall not apply to:

(1) The acquisition, disposition, or transfer of a real property asset or interest in a real property asset by lease, purchase, sale, or other method;

(2) A transaction pursuant to the subchapter I of Chapter 11 of Title 10 [§ 10-1101.01 et seq.];

(3) The District of Columbia Housing Finance Agency;

(4) The District of Columbia courts;

(5) The District Public Defender Service;

(6) The District of Columbia Advisory Neighborhood Commissions;

(7) The District of Columbia Water and Sewer Authority;

(8) Repealed.

(9) The Washington Convention and Sports Authority;

(10) The District of Columbia Auditor;

(11) The Not-for-Profit Hospital Corporation;

(12) A contract or agreement receiving or making grants or loans or for federal financial assistance;

(13) The procurement of services for the design, development, and construction of a facility on real property that has been disposed of pursuant to the authority in § 10-801; provided, that the construction of the facility is required

by the Land Disposition Agreement, or similar agreement, governing the disposition of the real property;

(14) The District of Columbia Retirement Board; and

(15) The procurement of services for the demolition of an existing facility and the design, development, and construction of a facility comprised of a fire station and office space for the Fire and Emergency Medical Services Department on real property located at Butternut Street and Georgia Avenue, N.W., at the Walter Reed Army Medical Center.

(Apr. 8, 2011, D.C. Law 18-371, § 105, 58 DCR 1185; Sept. 14, 2011, D.C. Law 19-21, § 1032(c), 58 DCR 6226; Dec. 2, 2011, D.C. Law 19-50, § 2, 58 DCR 8947.)

Effect of amendments. — D.C. Law 19-21 repealed subsec. (c)(8), which had read as follows: “(8) The Office of Public Education Facilities Modernization;”

D.C. Law 19-50, in subsec. (c), deleted “and” from the end of par. (11), substituted “; and” for a period the end of par. (12), and added pars. (13) to (15).

Emergency legislation. — For temporary (90 day) amendment of section, see § 1012(c) of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

For temporary (90 day) amendment of section, see § 2 of Building 18 Procurement Authority Emergency Amendment Act of 2011 (D.C. Act 19-127, August 1, 2011, 58 DCR 6770).

For temporary (90 day) amendment of section, see § 2(a) of District of Columbia Retirement Board Procurement Exemption Emer-

gency Amendment Act of 2011 (D.C. Act 19-144, August 9, 2011, 58 DCR 6821).

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 2-308.15.

Legislative history of Law 19-50. — Law 19-50, the “Disposed Real Property Procurement Clarification Amendment Act of 2011”, was introduced in Council and assigned Bill No. 19-294, which was referred to the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on July 12, 2011, and September 20, 2011, respectively. Signed by the Mayor on October 11, 2011, it was assigned Act No. 19-180 and transmitted to both Houses of Congress for its review. D.C. Law 19-50 became effective on December 2,

CASE NOTES

In general.

District of Columbia City Council exempted convention-center hotel project from Procurement Procedures Act (PPA); clause in one of five legislative enactments related to project expressly declared that City Council selected particular entity as developer of hotel and as lessee for hotel’s development site, subsection of another enactment provided that PPA would not apply to certain documents, those documents were encompassed by development and finance agreement that covered virtually every aspect of complex commercial transaction of hotel project, same enactment authorized mayor and Washington Convention and Sports Authority to lease hotel site to selected entity notwithstanding any other provision of law, and City Council’s essential codification of negotiations between District of Columbia and selected entity through five enactments evidenced intent

to create specific legislative framework outside PPA to govern transaction. *Wardman Investor, LLC v. D.C., Marriott International, Inc., Washington Convention and Sports Authority*, 138 WLR 1221 (Super. Ct. 2010).

District of Columbia City Council had authority, subject to certain limitations such as prohibition of lending public credit for private undertaking, to exempt convention-center hotel project from Procurement Procedures Act (PPA) if City Council had authority to enact procurement laws; City Council had plenary, though not absolute, authority to legislate for District of Columbia and could, as it saw fit in its sovereign legislative judgment, exempt, amend, or repeal laws enacted pursuant to its plenary authority. *Wardman Investor, LLC v. D.C., Marriott International, Inc., Washington Convention and Sports Authority*, 138 WLR 1221 (Super. Ct. 2010).

*Subchapter II. Procurement Organization.***§ 2-352.01. Office of Contracting and Procurement; authority.**

(a)(1) There is established as an independent agency the Office of Contracting and Procurement, which shall be administered by the Chief Procurement Officer. Except as otherwise provided in this chapter, OCP, through the CPO, shall have the exclusive authority to administer the provisions of this chapter.

(2) Notwithstanding paragraph (1) of this subsection, until October 1, 2013, the Police and Firefighter's Retirement and Relief Board, through its chief procurement officers, shall exercise the duties of the CPO.

(3) Notwithstanding paragraph (1) of this subsection, until October 1, 2015, the following agencies, through their chief procurement officers, shall exercise the duties of the CPO for their respective agencies:

(A) The Department of Disability Services; and

(B) The Department of Mental Health, if a court order no longer requires the agency to be exempt from the CPO's authority.

(4) The CPO may delegate contracting authority to employees of an agency, including OCP, or another instrumentality.

(5) Agencies and instrumentalities subject to this chapter shall determine their requirements for goods and services and administering awarded contracts.

(b) Notwithstanding subsection (a) of this section, the following agencies shall not be subject to the authority of the CPO, but shall conduct procurements in accordance with the provisions of this chapter:

(1) The Office of the Chief Financial Officer;

(2) The University of the District of Columbia;

(3) The District of Columbia Housing Authority;

(4) The District of Columbia Public Library;

(5) The District of Columbia Public Schools;

(6) The Child and Family Services Agency, until such time as a court order no longer requires the agency to be exempt from the CPO's authority;

(7) The District of Columbia Retirement Board;

(8) The Public Service Commission;

(9) The Office of the People's Counsel;

(10) The Criminal Justice Coordinating Council; and

(11) The Department of General Services.

(c) The Office of the Attorney General and the Inspector General may contract for the services of accountants, lawyers, and other experts when they determine and state in writing that good reason exists why the services should be procured independently of the Chief Procurement Officer.

(d) Except regarding agencies exempted in §§ 2-351.05(c) and 2-352.01(b) and roads and bridges, the Department of Real Estate Services shall have procurement authority for construction and related services under subchapter VI of this chapter.

(e) Except as otherwise provided in § 2-351.05(b), the CPO may review and

monitor procurements by any agency, instrumentality, employee, or official exempt under this chapter or authorized to procure independently of OCP.

(f) The CPO may conduct procurements and award contracts on behalf of any agency exempt under this chapter or authorized to procure independently of OCP, when requested by the agency to do so. In conducting procurements or awarding contracts, the CPO shall comply with the requirements of this chapter.

(Apr. 8, 2011, D.C. Law 18-371, § 201, 58 DCR 1185; Sept. 14, 2011, D.C. Law 19-21, § 1032(d), 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21, in subsec. (b), deleted “and” from the end of par. (9), substituted “; and” for a period the end of par. (10), and added par. (11).

Emergency legislation. — For temporary (90 day) amendment of section, see § 1012(d) of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

For temporary (90 day) amendment of sec-

tion, see § 2(b) of District of Columbia Retirement Board Procurement Exemption Emergency Amendment Act of 2011 (D.C. Act 19-144, August 9, 2011, 58 DCR 6821).

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 2-308.15.

§ 2-352.02. Criteria for Council review of multiyear contracts and contracts in excess of \$1 million.

(a) Pursuant to § 1-204.51, prior to the award of a multiyear contract or a contract in excess of \$1 million during a 12-month period, the Mayor or executive independent agency or instrumentality shall submit the proposed contract to the Council for review and approval in accordance with the criteria established in this section.

(b)(1) A proposed multiyear contract shall be deemed disapproved by the Council unless, during the 45-calendar-day review period beginning on the 1st day (excluding Saturdays, Sundays, and holidays) following its receipt by the Office of the Secretary to the Council, the Council adopts a resolution to approve the proposed multiyear contract.

(2) A proposed contract in excess of \$1 million during a 12-month period shall be deemed approved by the Council if one of the following occurs:

(A) During the 10-day period beginning on the 1st day (excluding Saturdays, Sundays, and holidays) following its receipt by the Office of the Secretary to the Council, no member of the Council introduces a resolution to approve or disapprove the proposed contract; or

(B) If a resolution has been introduced in accordance with subparagraph (A) of this paragraph, and the Council does not disapprove the contract during the 45-day review period beginning on the 1st day (excluding Saturdays, Sundays, and holidays) following its receipt by the Office of the Secretary to the Council.

(3)(A) Council approval of contracts submitted pursuant to paragraph (2) of this subsection shall expire 12 months after the award of the contract.

(B)(i) Council approval of a contract containing a provision that grants to the District the option of continuing or amending the contract beyond the

12-month period of Council approval shall not constitute Council approval of the exercise of the option contract.

(ii) To exercise an option that meets the criteria for Council review pursuant to this section, the Mayor shall submit the option contract to the Council pursuant to this section.

(iii) The exercise of an option that meets the criteria for Council review under this subsection without Council review of the option contract is a violation of this section and § 1-204.51.

(c) Proposed contracts submitted pursuant to this section may be submitted electronically and shall contain a summary, including the following:

(1) The proposed contractor, contract amount, unit and method of compensation, contract term, and type of contract;

(2) The goods or services to be provided, the methods of delivering goods or services, and any significant program changes reflected in the proposed contract;

(3) The selection process, including the number of offerors, the evaluation criteria, and the evaluation results, including price and technical components;

(4) The background and qualifications of the proposed contractor, including its organization, financial stability, personnel, and prior performance on contracts with the District government;

(5) Performance standards and expected outcomes of the proposed contract;

(6) A certification that the proposed contract is within the appropriated budget authority for the agency for the fiscal year and is consistent with the financial plan and budget adopted in accordance with §§ 47-392.01 and 47-392.02;

(7) A certification that the proposed contract is legally sufficient, including whether the proposed contractor has any currently pending legal claims against the District;

(8) A certification that the proposed contractor is current with its District and federal taxes or has worked out and is current with a payment schedule approved by the District or federal government;

(9) The status of the proposed contractor as a certified local, small, or disadvantaged business enterprise, as defined in subchapter IX-A of Chapter 2 of this title [§ 2-218.01 et seq.];

(10) Other aspects of the proposed contract that the CPO considers significant;

(11) A statement indicating whether the proposed contractor is currently debarred from providing services or goods to the District or federal government, the dates of the debarment, and the reasons for debarment; and

(12) Where the contract, if executed, will be made available online.

(d) No proposed multiyear contract and no proposed contract in excess of \$1 million for a 12-month period shall be awarded until after the Council has reviewed and approved the proposed contract as provided in this section.

(e) Notwithstanding subsection (a) of this section, review and approval by the Council of a definitive contract in excess of \$1 million during a 12-month period shall constitute the Council review and approval, required by § 1-

204.51(b), of the definitive contract and the merged letter contract contained therein.

(f) Any employee or agency head who shall knowingly or willfully enter into a proposed multiyear contract or a proposed contract in excess of \$1 million without prior Council review and approval in accordance with this section shall be subject to suspension, dismissal, or other disciplinary action under the procedures set forth in subchapter XVI-A of Chapter 6 of Title 1 [§ 1-616.51 et seq.].

(g)(1) No contractor who knowingly or willfully performs on a contract with the District in excess of \$1 million for a 12-month period without prior Council approval shall be paid more than \$1 million for the products or services provided.

(2) No contractor who knowingly or willfully performs on a multiyear contract with the District without prior Council approval of the multiyear contract shall be paid in more than one calendar year for the products or services provided.

(h) Review and approval by the Council of the annual capital program of federal highway aid projects shall constitute the Council review and approval required by § 1-204.51(d)(3) of individual federal-aid highway contracts that make up the annual program.

(Apr. 8, 2011, D.C. Law 18-371, § 202, 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-301.05e. history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 18-371. — For

CASE NOTES

In general.

Section 1-229 does not allow the District of Columbia Council to require approval of certain individual contracts by means of a resolution of the Council. *Wilson v. Dixon*, 120 WLR 33 (Super. Ct. 1992).

§ 2-352.03. Office of Contracting and Procurement.

(a) The agency head of the Office of Contracting and Procurement shall be the Chief Procurement Officer.

(b) The CPO shall be appointed by the Mayor with the advice and consent of the Council pursuant to § 1-523.01.

(c) On April 8, 2011, the incumbent CPO shall continue to serve as the CPO. If the incumbent CPO is unable to serve as the CPO, until a new CPO is appointed by the Mayor pursuant to § 1-523.01, the highest ranking employee of OCP shall serve as acting CPO.

(d) The CPO shall have not less than 5 years of senior-level experience in procurement and shall have demonstrated, through knowledge and experience, the ability to administer a public procurement system of the size and complexity of the program established by this chapter.

(e) The CPO shall serve for one 5-year term and may be reappointed pursuant to subsection (b) of this section.

(f) The CPO shall not be removed from office before the expiration of the

5-year term except for cause, subject to the right of appeal as provided in subchapter VI of Chapter 6 of Title 1. [§ 1-606.01 et seq.].

(Apr. 8, 2011, D.C. Law 18-371, § 203, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-352.04. Duties of the Chief Procurement Officer.

(a) The Chief Procurement Officer shall be the chief procurement official of the District.

(b) The CPO shall have the following authority and responsibility:

(1) To serve as the central procurement and contracting officer for the District;

(2) To identify gaps, omissions, or inconsistencies in procurement laws, rules, and policies, or in laws, rules and policies affecting procurement-related activities, and to recommend changes to laws, rules, and procedures;

(3) To provide overall leadership in the implementation of procurement rules, coordinate all procurement activities of the District government in accordance with the provisions of this chapter, and develop a system of unified and simplified procurement procedures and forms.

(4) To prepare and issue standard specifications for goods, services, and construction required by the District government;

(5) To establish a standardization program for goods and services when it is determined to be in the best interests of the District;

(6) To review, monitor, and audit the procurement activities of the District;

(7) To prepare, establish, and implement a periodic review process for the evaluation of contractors who provide goods or services to the District;

(8) To identify and assess trends and developments in the field of government contracting, including identifying best practices and innovation opportunities for the District;

(9) To operate and maintain an electronic procurement system;

(10) To sell, trade, or otherwise dispose of surplus goods belonging to the District government;

(11) To establish procedures for the inspection, testing, and acceptance of goods, services, and construction;

(12) To develop guidelines for the recruitment, training, career development, and performance evaluation of all procurement personnel;

(13) To staff OCP with procurement professionals, including attorneys, dedicated to the formation and administration of contracts on behalf of the entities covered by this chapter;

(14) To create and maintain a transparent Internet site, accessible to the public, providing information on solicitations, contracts, and related laws, rules, and policies;

(15) To promote to the purchase of environmentally preferable products and services; and

(16) To establish certification requirements for contracting personnel.
(Apr. 8, 2011, D.C. Law 18-371, § 204, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-352.05. Privatization contracts and procedures requirements.

(a) Before issuing a solicitation for a privatization contract pursuant to this section, the District government agency on whose behalf the solicitation will be issued shall prepare an estimate of the fully allocated cost associated with providing the relevant goods or services using District government employees. The agency shall transmit this estimate to the contract specialist responsible for the solicitation, who shall retain the estimate as part of the official contract file.

(b) A solicitation for a proposed privatization contract issued pursuant to this section shall include information describing how current District government employees may exercise the right to bid on the contracts.

(c) Before awarding a privatization contract, and prior to modifying a contract, the Mayor, instrumentality, or independent agency head shall transmit to the Council a determination and findings that:

(1) Compares the current fully allocated cost of providing the services using District government employees, departments, or agencies, using the estimate described in subsection (a) of this section, to the fully allocated costs associated with contracting for the service;

(2) Demonstrates that the privatization contract will provide savings of at least 5% over the duration of the contract in terms of total cost or the unit cost of providing the goods or services;

(3) Describes the expected impact of the privatization contract on the quality of goods or services provided to or on behalf of the District government, including performance targets and requirements for the contractor; and

(4) Includes a written confirmation of review by officials, including the Chief Financial Officer, the Attorney General for the District of Columbia, and the CPO.

(d) A privatization contract, or any contracting policies and procedures relating to these contracts, to provide goods and services to or on behalf of the District government, including a contract resulting from a process of managed competition, shall provide that:

(1) The Mayor, instrumentality, or independent agency head shall complete the determination and findings described in subsection (c) of this section and transmit the determination and findings to the Council prior to the award of the contract;

(2) A contractor who is awarded a contract that displaces District government employees shall offer to the displaced employee a right of first refusal to employment by the contractor, in a comparable available position for which the

employee is qualified, for at least a 6-month period during which the employee shall not be discharged without cause;

(3) Any District employee who is displaced as a result of a privatization contract, and is hired by the contractor who was awarded the privatization contract, shall be entitled to the benefits provided by the Service Contract Act of 1965, approved October 22, 1965 (79 Stat. 1034; 41 U.S.C. [§ 351 et seq.]);

(4) If the employee's performance during the 6-month transitional employment period described in paragraph (2) of this subsection is satisfactory, the contractor shall offer the employee continued employment under terms and conditions established by the contractor;

(5) The privatization contract shall incorporate specific performance criteria and the contractor shall submit reports, as required by the contract, to the District government contracting officer and the Chief Financial Officer on the contractor's compliance with the specific performance criteria; and

(6) The privatization contract may be canceled if the contractor fails to comply with the performance criteria set out in the contract.

(e) If a privatization contract is awarded, the Mayor, instrumentality, or the independent agency head shall make efforts to assist affected District government employees and to promote employment opportunities for District residents with the contractor. These efforts shall include:

(1) Consulting with union representatives and District government employees who would be affected by the privatization contract;

(2) Providing prior notification of at least 30 days of any adverse impact of a privatization contract to District government employees who would be affected by the contract, including notification to a labor organization certified as the exclusive representative of employees affected by the contract;

(3) Providing alternative employment in the District government to displaced District government employees if there are unfilled positions for which those employees are qualified; and

(4) Encouraging the contractor to offer employment to qualified District residents before offering employment to qualified nonresidents.

(f) An agency shall not attempt to circumvent the requirements of this section by eliminating the provision of goods or services by the agency before procuring substantially the same goods or services from a person who is not part of the District government.

(Apr. 8, 2011, D.C. Law 18-371, § 205, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-352.06. Procurement training institute. [Not funded].

Not funded.

(Apr. 8, 2011, D.C. Law 18-371, § 206, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

Editor's notes. — Section 1203 of D.C. Law 18-371 provided that this section shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of section 206 Law 18-371 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 18-371, are not in effect.

Subchapter III. Contractor Standards.

§ 2-353.01. Contractor standards.

The CPO shall establish a process to certify, on a solicitation-by-solicitation basis, the responsibility of prospective contractors. The process shall ensure that the prospective contractor:

- (1) Has adequate financial resources to perform the contract or the ability to obtain those resources;
- (2) Is able to comply with the required or proposed delivery or performance schedule, based upon the bidder's or offeror's existing commercial and government contract commitments;
- (3) Has a satisfactory performance record;
- (4) Has a satisfactory record of integrity and business ethics;
- (5) Has a satisfactory record of compliance with the law, including labor and civil rights laws and rules and part A of subchapter X of Chapter 2 of this title [§ 2-219.01 et seq.];
- (6) Has, or has the ability to obtain, the necessary organization, experience, accounting, operational control, and technical skills;
- (7) Has, or has the ability to obtain, the necessary production, construction, technical equipment, and facilities;
- (8) Has not exhibited a pattern of overcharging the District;
- (9) Does not have an outstanding debt with the District or the federal government in a delinquent status; and
- (10) Is otherwise qualified and is eligible to receive an award under applicable laws and rules.

(Apr. 8, 2011, D.C. Law 18-371, § 301, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-353.02. Determination of contractor responsibility.

(a) Prior to awarding a contract, the District shall make a determination, in accordance with the process established under § 2-353.01, that the prospective contractor has the necessary capacity to perform in accordance with the terms and conditions of the contract.

(b) For all contracts to exceed \$100,000, a potential contractor shall complete and submit with its bid or offer a certification developed by OCP to provide information needed to determine if a prospective contractor is responsible. The certification shall be signed under the penalty of perjury.

(c) After the contract is awarded, if the District learns that the contractor certified false information, the District may terminate the contract. The contractor shall update its responses in the certification during the term of the contract within 60 days of a material change in a response to its prior questionnaire and prior to the exercise of an option year contract. The District may consider failure of the contractor to update the certification with this information as material breach of the contract and invoke remedies pursuant to the provisions of this chapter. Information within the certification may be made available to the public, except to the extent that any information is exempt from disclosure.

(d) A determination by the CPO that a prospective contractor is non-responsible shall be final. The determination of non-responsibility shall not be overturned unless arbitrary or capricious.

(e) Upon determining that a prospective contractor is non-responsible, the CPO shall consider whether the contractor should be suspended or debarred pursuant to the procedure and criteria of § 2-359.07.

(f) Contractors shall ensure that their subcontractors meet the criteria for responsibility pursuant to § 2-353.01.

(g) Information about a prospective or current contractor relevant to a contractor's responsibility, or lack thereof, may be submitted for consideration to the CPO by a member of the general public.

(Apr. 8, 2011, D.C. Law 18-371, § 302, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

Subchapter IV. Source Selection and Contract Formation.

§ 2-354.01. Source selection methods.

(a)(1) Except as otherwise authorized by law, all District government contracts shall be awarded by:

- (A) Competitive sealed bidding pursuant to § 2-354.02;
- (B) Competitive sealed proposals pursuant to § 2-354.03;
- (C) Sole source procurements pursuant to § 2-354.04;
- (D) Emergency procurements pursuant to § 2-354.05;
- (E) Human care procurements pursuant to § 2-354.06;
- (F) Small purchase procurements pursuant to § 2-354.07;
- (G) Special pilot procurements pursuant to § 2-354.08;
- (H) Reverse auctions pursuant to § 2-354.09;
- (I) Procurements through a General Services Administration schedule pursuant to § 2-354.10;
- (J) Cooperative agreements pursuant to § 2-354.11;
- (K) Procurements through the DCSS pursuant to § 2-354.12; or
- (L) Infrastructure facilities and services pursuant to subchapter VI of this chapter.

(2) The CPO shall publish annually on the Internet a report on the

number of and dollar value of contracts executed under each source selection method.

(b)(1) Except for members of a technical advisory group, a District employee or official shall not attempt to influence a procurement professional with respect to source selection; provided, that an employee or official may attempt to prevent a procurement professional from violating law or rules.

(2) Any employee or official who violates this section shall be subject to suspension, dismissal, or other disciplinary action under the procedures pursuant to subchapter XVI-A of Chapter 6 of Title 1 [§ 1-616.51 et seq.].

(Apr. 8, 2011, D.C. Law 18-371, § 401, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-354.02. Competitive sealed bids.

(a) Contracts exceeding \$100,000 shall be awarded by competitive sealed bidding unless the CPO issues a determination and findings that use of competitive sealed bidding is not practicable or not in the best interests of the District.

(b) Bids shall be solicited through an Invitation for Bids.

(c) The Invitation for Bids may include special standards of responsibility to ensure that bidders are properly qualified to perform the work.

(d) The Invitation for Bids shall state whether an award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the lowest evaluated bid price basis is used, the objective measurable criteria to be utilized shall be set forth in the Invitation for Bids.

(e)(1) The CPO shall provide public notice of the Invitation for Bids of not less than 14 days for contracts, unless the CPO issues a determination and findings that it is appropriate to shorten the notice period to a period of not less than 3 days. In making the determination and findings, the CPO shall consider factors including the complexity of the procurement, the type of goods or services being purchased, and the impact of a shortened notice period on competition.

(2)(A) The CPO shall maintain an Internet site that provides prospective contractors with public notice of opportunities to bid, notice of contract awards, and other relevant information about District procurements.

(B) Public notice of an Invitation for Bids may include publication in newspapers or trade publications considered to be appropriate by the CPO to give adequate public notice.

(f) Bids shall be opened publicly at the time and place designated in the Invitation for Bids; provided, that the opening may be conducted in a publicly accessible electronic forum. Each bid, with the name of the bidder and price offering contained therein, shall be recorded and be open to public inspection.

(g) The contract shall be awarded after completion of evaluation procedures for competitive sealed bids.

(h) Correction or withdrawal of bids shall be allowed only to the extent permitted by rules issued pursuant to this chapter.

(Apr. 8, 2011, D.C. Law 18-371, § 402, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-354.03. Competitive sealed proposals.

(a) A contract may be entered into by competitive sealed proposal when the use of competitive sealed bidding is not practicable or not advantageous to the District.

(b) Proposals shall be solicited from the maximum number of qualified sources and in a manner consistent with the nature of, and the need for, the goods, services, or construction being acquired.

(c) Proposals shall be solicited through a request for proposals. The CPO shall provide public notice of the RFP of not less than 21 days, unless the CPO issues a determination and findings that it is appropriate to shorten the notice period to a period of not less than 14 days. In making the determination and findings, the CPO shall consider factors including the complexity of the procurement, the type of goods or services being purchased, and the impact of a shortened notice period on competition.

(d)(1) An RFP shall set forth each evaluation factor and indicate the relative importance of each evaluation factor. Price shall be included as an evaluation factor.

(2) Each RFP shall include a statement of work or other description of the District's specific needs, which shall be used as a basis for the evaluation of proposals.

(e) The contract shall be awarded by written notice to the responsive and responsible bidder whose bid will be most advantageous to the District.

(f)(1) The contracting officer may issue an RFQ before an RFP if the CPO makes a determination and findings that proceeding with an RFQ process would be advantageous to the District and that establishes a reasonable price range for the procurement.

(2) The RFQ shall include a description of the statement of work to be solicited by the RFP, the deadline for submission of information, and how prospective offerors may apply for consideration. The RFQ shall require information only on the prospective contractor's qualifications, experience, and ability to perform the requirements of the contract.

(3) After receiving the responses to the RFQ from prospective contractors, the contracting officer shall determine in writing the ranking of the prospective contractors from the most qualified to the least qualified on the basis of the information provided. The contracting officer shall then issue an RFP to at least the 3 highest-ranked prospective contractors. The determination regarding how many proposals to solicit shall not be subject to review.

(g) Upon receiving the responses to an RFP, the contracting officer shall:

(1) Evaluate the proposals received using only the criteria stated in the RFP and in accordance with weightings that have been provided in the RFP; and

(2) Rank the prospective contractors from most advantageous to least advantageous to the District.

(h)(1) After ranking the prospective contractors, the contracting officer may elect to proceed with negotiations in accordance with paragraph (2) of this subsection. The contracting officer's decision shall not be subject to review.

(2) If the contracting officer elects to proceed with negotiations, the contracting officer shall negotiate with the highest-ranked prospective contractor on price or matters affecting the scope of the contract, so long as the terms of the final contract are within the scope of the request for proposals. If a satisfactory contract cannot be negotiated with the highest-ranked prospective contractor, the contracting officer may negotiate the terms of the contract with the 2nd most qualified prospective contractor or lower-ranked prospective contractors in order of ranking until a satisfactory contract can be awarded.

(3) The contracting officer may reopen negotiations with any prospective contractor with whom negotiations were terminated.

(4) The contracting officer may make changes within the general scope of the RFP but shall then provide all offerors an opportunity to submit their best and final offers.

(Apr. 8, 2011, D.C. Law 18-371, § 403, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-354.04. Sole source procurements.

(a) A contract may be awarded through noncompetitive negotiations when there is only one source for the required good or service.

(b) The CPO shall make a determination and findings justifying the sole source procurement.

(c) Notice of intent to enter into a sole source contract shall be posted on the Internet at least 10 days prior to award. The notice shall include:

(1) The determination and findings required by subsection (b) of this section;

(2) A description of the item to be procured; and

(3) The intended sole source contractor.

(d) The contract shall be made available online within 7 days of the contract award.

(Apr. 8, 2011, D.C. Law 18-371, § 404, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-354.05. Emergency procurements.

(a) Notwithstanding any other provision of this chapter, a contract may be awarded through an emergency procurement as defined by rules:

(1) When there is an imminent threat to the public health, welfare, property, or safety; or

(2) To prevent or minimize serious disruption in agency operations.

(b) Emergency procurements shall be made with as much competition as is practicable under the circumstances, based on the judgment and determination of the contracting officer.

(c) The contracting officer may issue oral orders or notices to proceed to contractors to provide services or goods to the District; provided, that the directive shall be reduced to writing within 3 business days after issuance and funding for the services or goods provided shall be certified by the appropriate fiscal official.

(d) Emergency procurement procedures shall not be used for contracts exceeding 90 days; provided, that if the development time for the good or service exceeds 90 days, the contract shall not exceed 120 days.

(e) The CPO shall make a determination and findings justifying the emergency procurement.

(f) Notice of all emergency procurements shall be made available on the Internet no more than 7 days after the contract is awarded. The notice shall include:

(1) The determination and findings required by subsection (e) of this section;

(2) A description of the item to be procured;

(3) The designated contractor; and

(4) A copy of the contract.

(Apr. 8, 2011, D.C. Law 18-371, § 405, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-354.06. Human care procurements.

(a) Notwithstanding any other provision of this chapter, the CPO may award a human care agreement for a human care service if the human care service to be provided is:

(1) Negotiated on a fee for service or unit-rate basis using benchmarks and quantifiable measurements that shall be uniformly applied to providers of the same service;

(2) Purchased at rates adopted by rule; or

(3) One that an agency typically purchases as needs arise, but for which the quantity, rate of utilization, delivery areas, or specific beneficiaries of the service cannot be accurately estimated at the outset of the procurement process.

(b) If a human care agreement for a human care service is to be awarded, the CPO shall publish a request for qualifications that:

(1) States the general requirements for the service; and

(2) Requests interested service providers to respond in writing with a

statement of their qualifications to perform the service on a form prescribed by the CPO.

(c) The CPO shall retain statements of qualifications submitted by providers for 3 years.

(d) The CPO may conduct negotiations for a human care agreement with any responsible service provider who has submitted a statement of qualifications, without any additional public notice or solicitation required, to satisfy all or part of the District's anticipated requirements for a particular human care service.

(e) Before conducting negotiations with a service provider, the CPO shall issue a determination and findings that the service provider is responsible in accordance with subchapter III of this chapter.

(f) The CPO may authorize the use of vouchers to authorize the delivery of service provided by service providers who enter into human care agreements.

(g) The CPO shall provide public notice of the award of a human care agreement pursuant to this section on the Internet.

(h) The human care agreement shall identify the services to be rendered during the term of the agreement and shall set forth the terms and conditions of any purchases issued pursuant to the agreement. The contracting officer shall include in each human care agreement the following information:

(1) A statement that the human care agreement is not a commitment to purchase any quantity of a particular good or service covered under the agreement; and

(2) A statement that the District is obligated only to the extent that authorized purchases are made pursuant to the human care agreement.

(Apr. 8, 2011, D.C. Law 18-371, § 406, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-354.07. Small purchase procurements.

(a) The CPO may establish a streamlined process for entering into contracts for goods and services not exceeding \$100,000. The process shall set forth:

(1) Requirements for basic competition, including solicitation of contracts or orders from multiple vendors;

(2) A noncompetitive process for entering into contracts under a dollar threshold established by the CPO not to exceed \$10,000; and

(3) Requirements that purchases be made transparent.

(b) Procurement requirements shall not be parceled, split, divided, or purchased over a period of time to avoid the \$100,000 limitation of subsection (a) of this section.

(c) The CPO shall implement standards to monitor small purchase procedures to ensure compliance with applicable laws, rules, and policies.

(Apr. 8, 2011, D.C. Law 18-371, § 407, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-354.08. Special pilot procurements.

(a) The CPO may, with prior public notice and in accordance with rules issued pursuant to this chapter, award a contract without competitive sealed bidding or competitive sealed proposals if it is determined that an unusual or unique situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals not in the public interest.

(b) A special pilot procurement under this section shall be made with as much competition as is practicable under the circumstances.

(c) A special pilot procurement under this section shall require a determination and findings setting forth the reasons warranting the special procurement and for the selection of the particular contractor.

(d) The CPO shall post the notice of award and the determination and findings on the Internet within 7 days after the execution and approval of a special pilot procurement.

(e) An unusual or unique situation justifying a special pilot procurement under this section shall include a contract made to:

- (1) Satisfy a new and unique District requirement; or
- (2) Obtain a new technology.

(Apr. 8, 2011, D.C. Law 18-371, § 408, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-354.09. Auctions.

(a)(1) The CPO may procure goods or services through reverse auction via the Internet when it is determined that the reverse auction bidding method is the most effective method for the District.

(2) The CPO may place any requirement for a good or service on an established Internet reverse auction exchange that would allow any bidder to competitively bid down the price of that good or service over a set period of time established by the CPO.

(3) The CPO may establish an online auction for the purposes of executing reverse auction transactions on behalf of the District.

(b)(1) The CPO may dispose of or sell surplus goods through standard auction via the Internet.

(2) The CPO may place any surplus goods on an established standard auction exchange on the Internet that would allow any person, excluding any employee of the disposing District agency, to competitively acquire surplus personal property or goods from the District.

(3) The CPO may establish a standard auction exchange on the Internet

for the purpose of executing standard auction transactions on behalf of the District government.

(Apr. 8, 2011, D.C. Law 18-371, § 409, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-354.10. General Services Administration schedules.

(a) The CPO may procure goods or services through a General Services Administration schedule pursuant to 40 U.S.C. § 502(a)(3) and 40 U.S.C. § 602(c).

(b) The CPO shall ensure that the price of any contract entered into under subsection (a) of this section is reasonable.

(Apr. 8, 2011, D.C. Law 18-371, § 410, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-354.11. Cooperative purchasing.

(a) The CPO may, and is encouraged to, participate in, sponsor, conduct, or administer cooperative purchasing agreements for the procurement of goods, services, or construction.

(b) Cooperative purchasing agreements entered into by the District government shall be in accordance with, to the extent practicable, all laws and rules of the District government with respect to contracting, and shall be consistent with laws and rules of the United States government that apply specifically to the District.

(c) An agency shall not enter into or participate in a cooperative purchasing agreement unless that participation is authorized by the CPO or a designee pursuant to the delegated contracting authority in § 2-352.01.

(d) The CPO may charge and collect an administrative fee for serving as the lead jurisdiction on a cooperative agreement and may receive any rebates or other fees for participating in a cooperative agreement. The CPO shall deposit such fees in the District of Columbia Supply Schedule, Purchase Card, and Training Fund established in § 2-361.03.

(Apr. 8, 2011, D.C. Law 18-371, § 411, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-354.12. District of Columbia Supply Schedule.

(a) There is established a District of Columbia Supply Schedule program under which contracts may be awarded to certified business enterprises. The

DCSS program may consist of multiple award schedules or other procurement programs established by the CPO.

(b) A DCSS contract may be awarded by:

(1) Any source selection method authorized by subchapter IV of this chapter;

(2) A contract with a contractor who maintains a price agreement or schedule with any federal agency so long as the contract does not authorize a price higher than is contained in the contract between the federal agency and the contractor; or

(3) A contract with a contractor who agrees to adopt the same pricing schedule for the same goods or services as that of a contractor who maintains a price agreement or schedule with any federal agency if the contract does not authorize a price higher than is contained in the contract between the federal agency and the contractor.

(c) An agency may refuse to award a contract or procurement set aside pursuant to subchapter IX-A of Chapter 2 of this title, [§ 2-218.01 et seq.], and may thereafter issue the contract or procurement in the open market if the agency determines in writing that the bids for the contract or procurement set aside for a small business enterprise are believed to be 12% or more above the likely price on the open market.

(Apr. 8, 2011, D.C. Law 18-371, § 412, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-354.13. Competition exemptions.

Contracts for the following procurements shall be exempt from the competition requirements established by this chapter:

(1) Artistic services or works of art;

(2) Commodities or contractual services if federal or District law prescribes with whom the District must contract;

(3) Legal services or negotiation services in connection with proceedings before administrative agencies or state or federal courts, including experts, attorneys, and mediators;

(4) Copyrighted or patented materials, including technical pamphlets, published books, maps, and testing or instructional materials; provided, that the materials are purchased directly from the owner of the copyright or patent;

(5) Memberships in trade or professional organizations;

(6) Entertainers;

(7) Job-related seminars and training for District employees;

(8) Maintenance and support of existing software and technology to the extent that the creator of the intellectual property is still protected and is the only source of the maintenance and support of the existing software and technology;

(9) Public transit farecards, passes, and tokens;

- (10) Personal property or services provided by another public entity, agency, or authority;
- (11) Postage;
- (12) Purchases of advertising in all media, including electronic, print, radio, and television; provided, that they are purchased directly from the media outlet;
- (13) Trade and career fairs for District employees;
- (14) Special event venues and related services as dictated by the establishment;
- (15) Subscriptions for periodicals and newspapers;
- (16) Ticket purchases for special events, tourist attractions, and amusement parks; and
- (17) Professional development training which supports principal, teacher, and student achievement pursuant to the District of Columbia Public Schools Master Education Plan.

(Apr. 8, 2011, D.C. Law 18-371, § 413, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-354.14. Cancellation of solicitations.

An Invitation for Bid, a Request for Proposals, or other solicitation may be cancelled if it is determined in writing by the CPO that the action is taken in the best interests of the District government.

(Apr. 8, 2011, D.C. Law 18-371, § 414, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

CASE NOTES

In general.

Bidder lacked property interest required to maintain its claim that its due process rights were violated when District of Columbia Water and Sewer Authority (WASA) cancelled bid process and re-solicited bids under conditions favorable to competitor, notwithstanding that Procurement Practices Act imposed low-bidder rule and that bidder submitted lowest evaluated bid, inasmuch as Act also allowed cancellation of bid process even after bid opening. *C&E Servs. v. D.C. Water & Sewer Auth.*, 310 F.3d 197, 2002 U.S. App. LEXIS 23723 (C.A.D.C. 2002).

Contractor was not entitled to appeal, rather than protest, during precontract award period where contractor failed to establish that Contract Appeals Board's cancellation of invitations for bids prior to making award of contract was not allowed by statutory cancellation criteria and failed to establish that challenge made after ten-day deadline for protest would promote fuller and fairer redress of grievances. *D.C. Code 1981, § 1-1183.7. Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 1988 D.C. App. LEXIS 208 (1988).

§ 2-354.15. Collusion.

(a) A person who enters into a contract with the District after engaging in collusion with another person for the purpose of defrauding the District shall

be liable for damages equal to 3 times the value of the loss to the District attributable to the collusion.

(b) If there is a reasonable basis for believing that collusion has occurred among any individuals or entities for the purpose of defrauding the District, the CPO shall send a written notice of this belief to the Attorney General and to the Mayor.

(c) All documents involved in any procurement in which collusion is suspected shall be retained until the Attorney General gives notice that they may be destroyed. All documents shall be made available to the Attorney General.

(Apr. 8, 2011, D.C. Law 18-371, § 415, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-354.16. Contingent fees.

(a) A contractor shall not offer to pay any fee or other consideration that is contingent on the making of a contract.

(b) Every contract shall contain the following prohibition against contingent fees: “The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage fee, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For a breach or violation of this warranty, the District shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee.

(c) A District employee shall not solicit or secure, or offer to solicit or secure, a contract for which the employee is paid or is to be paid any fee or other consideration contingent on the making of the contract between the employee and any other person.

(Apr. 8, 2011, D.C. Law 18-371, § 416, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

CASE NOTES

In general.

Wrongful termination suit by Director of District of Columbia Office of Human Rights, alleging that he was fired for refusing to keep silent about illegal activity within mayor’s administration, specifically, the “steering” of contracts to particular contractor in alleged viola-

tion of anti-kickback provision of D.C. Procurement Practices Act, fell within expanded public policy exception to District’s rule barring such claims by at-will employees. *Holman v. Williams*, 436 F.Supp.2d 68, 2006 U.S. Dist. LEXIS 44805 (2006).

§ 2-354.17. Confidentiality.

The CPO shall review information which has been designated as confidential or proprietary by a person and which has been submitted in response to an Invitation for Bids or Request for Proposals. If the CPO determines that the designation is proper, the information shall be treated by the CPO, and any other District employee, in a confidential manner, shall be disclosed only to District employees for use in the procurement process, and shall not be disclosed to other persons or parties without the prior written consent of the person, except as provided by subchapter II of Chapter 5 of this title. [§ 2-531 et seq.].

(Apr. 8, 2011, D.C. Law 18-371, § 417, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-354.18. Right to audit records; right to inspect.

(a) The District may, at reasonable times and places, audit the books and records of any person who has submitted data to substantiate offered prices pursuant to § 2-354.19 to the extent that the books and records relate to that data. A person who receives a contract, change order, or contract modification for which the data is required, shall maintain books and records that relate to the cost or pricing data for 3 years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

(b) The Inspector General, District of Columbia Auditor, or District shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract, other than a firm fixed-price contract, to the extent that the books and records relate to the performance of the contract or subcontract. Books and records shall be maintained by the contractor for a period of 3 years from the date of final payment under the prime contract and by the subcontractor for a period of 3 years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

(c) The Inspector General, District of Columbia Auditor, or District may, at reasonable times, inspect the part of the place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the District.

(Apr. 8, 2011, D.C. Law 18-371, § 418, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-354.19. Reasonable prices.

(a) A contracting officer may request factual information reasonably avail-

able to the contractor or prospective contractor to substantiate that the price or cost offered, or some portion of it, is reasonable.

(b) The CPO shall establish a process for determining the reasonableness of prices.

(Apr. 8, 2011, D.C. Law 18-371, § 419, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-354.20. Prequalification.

(a) The CPO may establish a prequalification process to certify the financial and professional qualifications of prospective bidders and offerors for District government contracts. The CPO may limit participation in certain procurements to prospective contractors who have been prequalified under the process.

(b) The use of the prequalification process under this section shall not nullify the requirement for a determination of contractor responsibility under subchapter III of this chapter.

(c) Information about a prospective or current contractor relevant to a contractor's prequalification criteria may be submitted by a member of the general public to the CPO for consideration in determining or verifying the contractor's prequalified status.

(Apr. 8, 2011, D.C. Law 18-371, § 420, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

Subchapter V. Types of Contracts.

§ 2-355.01. Cost-plus-a-percentage-of-cost contract prohibited.

An agency shall not enter into a cost-plus-a-percentage-of-cost contract.

(Apr. 8, 2011, D.C. Law 18-371, § 501, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-355.02. Cost-reimbursement contracts.

(a) A cost-reimbursement contract shall not be awarded pursuant to § 2-354.02, § 2-354.03, or § 2-354.04 unless there is a determination and findings that:

(1) The contract is likely to be less costly to the District than any other type of contract; or

(2) It is impracticable to obtain goods or services of the kind or quality required except under a cost-reimbursement contract.

(b) All cost-reimbursement contracts shall contain a provision that only costs determined in writing to be reimbursable by the contracting officer, in accordance with cost principles set forth in rules issued pursuant to this chapter, shall be reimbursable.

(Apr. 8, 2011, D.C. Law 18-371, § 502, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-355.03. Use of other types of contracts.

Subject to the limitations of this chapter and this subchapter, any type of contract which will promote the best interests of the District may be used.

(Apr. 8, 2011, D.C. Law 18-371, § 503, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-355.04. Multiyear contracts.

(a) Unless otherwise provided in an appropriations act, or approved pursuant to § 1-204.51, a contract for goods or services shall not be entered into for periods which extend beyond 12 months.

(b) Before entering into a multiyear contract, the CPO shall determine in writing that:

(1) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(2) The contract would serve the best interests of the District, encourage effective competition, or otherwise promote economies in District procurement.

(c) If funds are not appropriated or otherwise made available for the continued performance in a subsequent year of a multiyear contract, the contract for the subsequent year shall be terminated, either automatically or in accordance with the termination clause of the contract, if any. Unless otherwise provided for in the contract, the effect of termination shall be to discharge both the District and the contractor from future performance of the contract, but not from their existing obligations. The contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the goods or services delivered under the contract.

(Apr. 8, 2011, D.C. Law 18-371, § 504, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

Subchapter VI. Procurement of Construction Projects and Related Services.

§ 2-356.01. Project delivery methods authorized.

(a) This subchapter shall govern procurements for construction projects and related management services in the District.

(b) The following project delivery methods are authorized for procurements within the scope of this subchapter:

- (1) Architectural and engineering services;
- (2) Construction management;
- (3) Construction management at risk;
- (4) Design-bid-build;
- (5) Design-build;
- (6) Design-build-finance-operate-maintain;
- (7) Design-build-operate-maintain; and
- (8) Operations and maintenance.

(c) Participation in a report or study that is subsequently used in the preparation of design requirements for a project shall not disqualify a firm from participating as a member of a proposing team in a design-build, design-build-operate-maintain, or design-build-finance-operate-maintain procurement unless the participation would provide the firm with a substantial competitive advantage.

(Apr. 8, 2011, D.C. Law 18-371, § 601, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-356.02. Source selection methods assigned to project delivery methods.

(a) This section specifies the source selection methods applicable to procurements for the project delivery methods identified in § 2-356.01, except as provided in §§ 2-354.04, 2-354.05, 2-354.07, 2-354.08, 2-354.11, and 2-354.12.

(b)(1) The qualifications-based selection process set forth in § 2-356.04 shall be used to procure architectural and engineering services in design-bid-build procurements.

(2) Competitive sealed bidding, as set forth in § 2-354.02, shall be used to procure construction in design-bid-build procurements, except where rules authorize the use of competitive sealed proposals, as set forth in § 2-354.03, for contracts for construction management at-risk.

(c) Contracts for operations and maintenance shall be procured as set forth in § 2-354.01.

(d) Contracts for design-build shall be procured by competitive sealed proposals, as set forth in § 2-354.03.

(e) Contracts for design-build-operate-maintain shall be procured by competitive sealed proposals, as set forth in § 2-354.03.

(f) Contracts for design-build-finance-operate-maintain shall be procured by competitive sealed proposals, as set forth in § 2-354.03.

(Apr. 8, 2011, D.C. Law 18-371, § 602, 58 DCR 1185.)

Cross references. — Stadiums, construction, see §§ 10-1601.03, 10-1601.05. history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 18-371. — For

§ 2-356.03. Prequalification process for construction.

(a) Except for architectural and engineering services, prospective contractors for procurements under this subchapter may be selected through a prequalification process as set forth in this section.

(b) The prequalification process shall provide for the annual publication of a list describing specific types of solicitations for which the agency will seek prequalified contractors. Solicitations may be added to the list at any time; provided, that the addition of a solicitation to the list shall be published for not less than 30 days before the solicitation is released.

(c) The prequalification criteria may include the following:

- (1) Experience and expertise of personnel;
- (2) Prior completion of similar work;
- (3) Receipt of favorable references from prior work;
- (4) A certified letter indicating a surety's willingness to provide bonding to the contractor for 100% of the proposed bid price;
- (5) Availability to complete the desired work;
- (6) Confirmation that the vendor is responsible;
- (7) Acceptable subcontracting plans; and
- (8) Any other criteria identified by the agency as relevant to evaluation of the prospective contractor.

(d) After an agency has prequalified prospective contractors, it may exclude from competition for the ensuing solicitation any person that has not been prequalified.

(e) The use of the prequalification process under this section shall not nullify the requirement for a determination of contractor responsibility under subchapter III of this chapter.

(Apr. 8, 2011, D.C. Law 18-371, § 603, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-356.04. Architectural and engineering services.

(a) The District shall announce all requirements for architectural and engineering services and negotiate contracts for these services on the basis of demonstrated competence and qualification and at fair and reasonable prices.

(b) In the procurement of architectural and engineering services, the CPO shall:

(1) Provide notice to firms to submit annually a statement of qualifications and performance data;

(2) Appoint one or more permanent or ad hoc architect-engineer evaluation boards, comprised of members with experience in architecture, engineering, construction, and District and related procurement matters.

(c) These boards shall include highly qualified professional employees of the District and may include private practitioners of architecture, engineering, or related professions. The members of a permanent or an ad hoc evaluation board shall be known as the architect-engineer selection committee.

(d) For each architectural and engineering services contract over \$100,000, the CPO shall appoint an architect-engineer selection committee. The selection committee for architectural and engineering services contracts under this amount shall be established in accordance with rules promulgated by the CPO. The selection committee shall evaluate current statements of qualifications and performance data on file with the District and those that may be submitted by other firms regarding the proposed contract. The selection committee shall conduct discussions with no less than 3 firms regarding the contract and the relative utility of alternative methods of approach for furnishing the required services, and then shall select therefrom, in order of preference, based upon criteria established and published by the selection committee, no less than 3 of the firms considered to be the most highly qualified to provide the services required.

(e) The contracting officer shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the contracting officer determines in writing to be fair and reasonable to the District. The contracting officer shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. A contracting officer shall proceed as follows:

(1) If the contracting officer is unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be terminated and the contracting officer shall then undertake negotiations with the 2nd most qualified firm.

(2) If the contracting officer is unable to negotiate a satisfactory contract with the firm considered to be the 2nd most qualified firm, the contracting officer shall terminate negotiations and shall undertake negotiations with the 3rd most qualified firm.

(3) If the contracting officer is unable to negotiate a satisfactory contract with the firm considered to be the 3rd most qualified firm, the contracting officer shall terminate negotiations.

(4) If the contracting officer is unable to negotiate a contract with any of the selected firms, the contracting officer may select additional firms in order of their competence and qualifications and shall continue negotiations in accordance with this section until an agreement is reached.

(Apr. 8, 2011, D.C. Law 18-371, § 604, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

Subchapter VII. Bonds and Other Forms of Security.

§ 2-357.01. Bid security in construction contracts.

(a) Bid security shall be required for all competitive sealed bidding and competitive sealed proposals for construction contracts when the price is estimated by the contracting officer to exceed \$100,000. Bid security shall be a bond provided by a surety company authorized to do business in the District or the equivalent in cash, or otherwise supplied in a form satisfactory to the District. This section shall not prevent the requirement of such bonds on such contracts under \$100,000 or bid or proposal bonds on any other contracts when the circumstances warrant.

(b) Bid security shall be in an amount equal to at least 5% of the amount of the bid.

(c) If the Invitation for Bids or Request for Proposals requires that a bid bond be provided, a bidder that does not comply shall be rejected unless, pursuant to rule, it is determined that the bid or offer fails to comply in a nonsubstantial manner with the security requirements.

(d) After bids are opened, they shall be irrevocable for the period specified in the Invitation for Bids. If a bidder is permitted to withdraw its bid or proposal before award, or is excluded from the competition before award, no action shall be had against the bidder or the bid security.

(Apr. 8, 2011, D.C. Law 18-371, § 701, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-357.02. Contract performance and payment bonds in construction contracts.

(a)(1) When a construction contract is awarded in excess of \$100,000, the following bonds or security shall be delivered to the District and shall become binding on the parties upon the execution of the contract:

(A) A performance bond satisfactory to the District, executed by a surety company authorized to do business in the District or otherwise secured in a manner satisfactory to the District, in an amount equal to 100% of the portion of the contract price that does not include the cost of operation, maintenance, and finance; and

(B) A payment bond satisfactory to the District, executed by a surety company authorized to do business in the District or otherwise secured in a manner satisfactory to the District, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract.

(2) The payment bond required by paragraph (1)(B) of this subsection

shall be in an amount equal to 100% of the portion of the contract price that does not include the cost of operation, maintenance, and finance.

(b) Pursuant to rules promulgated under this chapter, the CPO may reduce the amount of performance and payment bonds to 50% of the amounts established in subsection (a) of this section.

(c) This section shall not limit the authority of the District to require a performance bond or other security in addition to such bonds or in circumstances other than specified in subsection (a) of this section.

(d)(1) A person who has furnished labor or material to the contractor or its subcontractors for the work provided in the construction contract, in respect of which a payment bond is furnished under this section, and who has not been paid in full before the expiration of a period of 90 days after the day on which the last of the labor was done or performed by such person or material was furnished or supplied by such person for which claim is made, shall have a right of action on the payment bond for the amount unpaid at the time of institution of the action and to prosecute the action for the amount due to the person.

(2) Any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship express or implied with the contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days after the date on which the person did or performed the last of the labor or furnished or supplied the last of the material upon which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. The notice shall be personally served or served by other form of receipted transmittal that confirms actual delivery to the contractor at any place the contractor maintains an office or conducts its business or at the contractor's residence.

(e) An action instituted upon a payment bond shall be brought in a court of competent jurisdiction within the District, but an action suit shall not be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing the action. The obligee named in the bond need not be joined as a party in the action.

(f) An action instituted under this section shall not be commenced after one year from the date that the final labor was performed or the material was supplied.

(Apr. 8, 2011, D.C. Law 18-371, § 702, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-357.03. Bond forms and copies.

(a) The CPO shall prescribe the form of the bonds required by this chapter.

(b) Any person may request and obtain from the District a certified copy of

a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

(Apr. 8, 2011, D.C. Law 18-371, § 703, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-357.04. Other forms of security.

Pursuant to rules promulgated under this chapter, the CPO may require a solicitation to include one or more of the following forms of security to assure the timely, faithful, and uninterrupted provision of operations and maintenance services, procured separately or as one element of design-build-operate-maintain or design-build-finance-operate-maintain services:

(1) Operations period surety bonds that secure the performance of the contractor's operations and maintenance obligations under the project delivery methods set forth in § 2-356.01;

(2) Letters of credit in an amount appropriate to cover the cost to the District of preventing infrastructure service interruptions for a period up to 12 months under the project delivery methods set forth in § 2-356.01; or

(3) Appropriate written guarantees from the contractor (or depending upon the circumstances, from parent corporations) to secure the recovery of procurement costs to the District in the event of a default in performance by the contractor.

(Apr. 8, 2011, D.C. Law 18-371, § 704, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-357.05. Authority to require bonds.

Pursuant to rules promulgated under this chapter, the CPO may require a bond for any solicitation if the CPO determines that it would be in the best interests of the District.

(Apr. 8, 2011, D.C. Law 18-371, § 705, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-357.06. Fiscal responsibility.

(a) Every contract modification, change order, or contract price adjustment under a contract with the District shall be subject to prior written certification by the fiscal officer of the entity responsible for funding the project or the contract, or other official responsible for monitoring and reporting upon the status of the costs of the total project budget or contract budget, as to the effect

of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget.

(b) If the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget or the total contract budget, the contracting officer shall not execute or make the contract modification, change order, or adjustment in contract price unless:

(1) Sufficient funds are available therefor; or

(2) The scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration.

(Apr. 8, 2011, D.C. Law 18-371, § 706, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

Subchapter VIII. Supply Management.

§ 2-358.01. Supply management rules.

The CPO shall issue rules governing:

(1) The management of goods during their entire life cycle;

(2) The sale, lease, disposal, or transfer of surplus goods by public auction, competitive sealed bidding, competitive electronic sales, or other appropriate method designated by rule; provided, that no employee of the disposing agency shall be entitled to purchase any surplus goods.

(Apr. 8, 2011, D.C. Law 18-371, § 801, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-358.02. Disposition of surplus goods.

(a) The CPO may transfer District surplus goods to an organization qualified as tax-exempt under section 501 of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501), or state, county, or municipal jurisdictions after an attempt has been made to:

(1) Transfer property within an agency;

(2) Transfer property between agencies; and

(3) Auction the property for sale.

(b) To qualify for the receipt of surplus goods, a tax-exempt organization shall:

(1) Demonstrate that it meets any approval, accreditation, or licensing requirements for operation of its program;

(2) Certify and provide evidence that it is a nonprofit and tax-exempt organization under section 501 of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501);

(3) Certify that it is not debarred, suspended, or excluded from any federal or District program, including procurement programs; and

(4) Operate in compliance with applicable Federal nondiscrimination law.

(c)(1) Prior to sale, lease, transfer, or disposal of surplus computer and other information technology assets, the Chief Technology Officer shall certify that the equipment is sanitized of any confidential data or personal identifying information.

(2) The CPO shall ensure that all policies for the transfer of computers or other information technology goods are consistent with data and information security policies developed by the Chief Technology Officer.

(d) The CPO may abandon, recycle, sell for scrap, or destroy undistributed surplus goods upon making a written finding that the goods have no commercial value or the estimated cost of their continued care and handling would exceed the estimated proceeds from their sale.

(e) The CPO shall publish on the Internet all forms used for the purpose of disposing of surplus goods. The CPO may receive completed forms electronically.

(f) OCP shall publish records of all transfers of surplus goods on the Internet.

(g) OCP shall develop written policies and procedures for advertisement of auctions to ensure adequate public notice.

(Apr. 8, 2011, D.C. Law 18-371, § 802, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-358.03. Electronic Inventory Control System. [Not funded].

Not funded.

(Apr. 8, 2011, D.C. Law 18-371, § 803, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

Editor's notes. — Section 1203 of D.C. Law 18-371 provided that this section shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of section 1101 Law 18-371 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 18-371, are not in effect.

§ 2-358.04. District of Columbia Surplus Property Sales Revolving Fund. [Repealed].

Repealed.

(Apr. 8, 2011, D.C. Law 18-371, § 804, 58 DCR 1185; Sept. 14, 2011, D.C. Law 19-21, § 9023, 58 DCR 6226.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 2-351.15.

Subchapter IX. Prohibited Actions; Remedies.

§ 2-359.01. Oral agreements.

(a) A District employee shall not enter into an oral agreement with a contractor to provide goods or services to the District government without a valid written contract. A violation of this paragraph shall be cause for termination of employment of the District employee.

(b) A District employee shall not authorize payment for the value of goods or services received without a valid written contract. This subsection shall not apply to a payment required by court order, a final decision of the Contract Appeals Board, a settlement, or an approval by the CPO in accordance with subsection (d) of this section.

(c) Except as authorized under subsection (d) of this section, a contractor who enters into an oral agreement with a District employee to provide goods or services to the District government without a valid written contract shall not be paid. If the oral agreement was entered into by a District employee at the direction of a supervisor, the supervisor shall be terminated.

(d)(1) The CPO shall review, verify, and either approve or disapprove a request submitted by an agency director for authorization for payment for goods or services received without a valid written contract. A request shall not be approved without written notification of the disciplinary action taken by the relevant personnel authority against the responsible employee.

(2) If the employee who authorized payment or delivery of goods or services without a valid written contract is the CPO, the matter shall be referred to the Mayor for appropriate disciplinary action and the Mayor shall state in writing the disciplinary action taken before the CPO may approve or disapprove the request.

(3) The disciplinary action prescribed by this paragraph shall be in accordance with subchapter XVI-A of Chapter 6 of Title 1 [§ 1-616.51 et seq.].

(Apr. 8, 2011, D.C. Law 18-371, § 901, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-359.02. Improper contracts.

(a) A contract entered into in violation of this chapter or the rules issued pursuant to this chapter shall be void.

(b) A contract entered into in violation of this chapter or the rules issued pursuant to this chapter shall not be void if:

(1) It is determined in a proceeding pursuant to this chapter or subsequent judicial review that good faith has been shown by all parties; and

(2) The violation of the provisions of this chapter and the rules issued pursuant to this chapter was de minimis.

(c) If a contract is determined to be void under subsection (a) of this subsection, a contractor who has entered into the contract in good faith, without directly contributing to a violation and without knowledge of any violation of the act or rules issued pursuant to this chapter prior to the awarding of the contract, shall be compensated for costs actually incurred until the date that the contract was determined to be void.

(Apr. 8, 2011, D.C. Law 18-371, § 902, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-359.03. Termination of contracts.

(a) The CPO may terminate, without liability, any contract if:

(1) The contractor has been convicted of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the contract; or

(2) There has been a violation of this chapter.

(b) If a contract is terminated pursuant to this section, the contractor shall:

(1) Be paid only the actual costs of the work performed to the date of termination, plus termination costs, if any;

(2) Refund, and the CPO shall recover, all profits or fixed fees realized under the contract; and

(3) Refund, and the CPO shall recover, any other fee, commission, percentage, gift, compensation, or similar consideration paid, including contingent fees and brokerage fees.

(c) The rights and remedies in this section shall be in addition to any other right or remedy provided by law and the exercise of any of them shall not constitute a waiver of any other right or remedy provided by law.

(Apr. 8, 2011, D.C. Law 18-371, § 903, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-359.04. Sovereign immunity defense not available.

Unless otherwise specifically provided by law of the District, the District government and every officer, department, agency, or other unit of the District government shall not raise the defense of sovereign immunity in the courts of the District in an action based upon a written procurement contract executed on behalf of the District government.

(Apr. 8, 2011, D.C. Law 18-371, § 904, 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-308.01.

Legislative history of Law 18-371. — For

history of Law 18-371, see notes under § 2-351.01.

CASE NOTES

Garnishment or attachment.

District of Columbia is exempt from garnishment unless statute expressly allows it; day-to-day fiscal integrity of local government could not be maintained if judgment creditors could seize funds earmarked for other purposes. *Grunley Constr. Co. v. District of Columbia*, 704 A.2d 288, 1997 D.C. App. LEXIS 250 (1997).

“Sue and be sued” clause in District of Columbia’s enabling legislation did not constitute waiver of District’s sovereignty for purpose of garnishment of District bank account by contractor, even where account sought to be garnished was discrete account dedicated to payment on contract at issue in underlying dispute. *Grunley Constr. Co. v. District of Columbia*, 704 A.2d 288, 1997 D.C. App. LEXIS 250 (1997).

In contractor’s action to collect on judgment, it was not inappropriate for trial court to treat

issue of District of Columbia’s immunity from attachment as conceded or waived, where District failed to oppose both contractor’s initial motion for writ of attachment and contractor’s motion for reconsideration based upon District’s failure to oppose initial motion. *Grunley Constr. Co. v. District of Columbia*, 704 A.2d 288, 1997 D.C. App. LEXIS 250 (1997).

District of Columbia’s failure to oppose either contractor’s motion for writ of attachment or its subsequent motion for rehearing based upon District’s failure to oppose motion for writ did not waive District’s immunity from garnishment, absent any indication that its earlier silence had been intended as waiver of sovereign immunity and absent any unfair prejudice to contractor resulting from District’s late assertion of immunity. *Grunley Constr. Co. v. District of Columbia*, 704 A.2d 288, 1997 D.C. App. LEXIS 250 (1997).

§ 2-359.05. District government not liable for punitive damages.

In an action in contract based upon a written contract executed on behalf of the District government, or by an official or employee acting within the scope of the official’s or the employee’s authority, the District government, and its officers, departments, agencies, or other units of government, shall not be liable for punitive damages.

(Apr. 8, 2011, D.C. Law 18-371, § 905, 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-308.02.

Legislative history of Law 18-371. — For

history of Law 18-371, see notes under § 2-351.01.

CASE NOTES

In general.

Under local law, punitive damages may not be awarded against the District of Columbia; punitive damages are not recoverable against a municipality absent express statutory intent. *Estate of Phillips v. District of Columbia*, 257 F.Supp.2d 69, 2003 U.S. Dist. LEXIS 5029 (2003), reversed by, remanded by 455 F.3d 397, 372 U.S. App. D.C. 312, 2006 U.S. App. LEXIS 19280, 24 I.E.R. Cas. (BNA) 1517 (2006).

As damages won against officers in their personal capacity are not drawn from state coffers, punitive damages are recoverable in such suits. *Estate of Phillips v. District of Columbia*, 257 F.Supp.2d 69, 2003 U.S. Dist.

LEXIS 5029 (2003), reversed by, remanded by 455 F.3d 397, 372 U.S. App. D.C. 312, 2006 U.S. App. LEXIS 19280, 24 I.E.R. Cas. (BNA) 1517 (2006).

Award of punitive damages against District of Columbia and its employees acting in their official capacities were not authorized by statute, although punitive damages claims against District employees in their personal capacities were recoverable without statutory authorization. *Estate of Phillips v. District of Columbia*, 257 F.Supp.2d 69, 2003 U.S. Dist. LEXIS 5029 (2003), reversed by, remanded by 455 F.3d 397, 372 U.S. App. D.C. 312, 2006 U.S. App. LEXIS 19280, 24 I.E.R. Cas. (BNA) 1517 (2006).

§ 2-359.06. Claims by District government against contractors.

(a)(1) All claims by the District government against a contractor arising under or relating to a contract shall be decided by the contracting officer, who shall issue a decision in writing and furnish a copy of the decision to the contractor.

(2) The decision shall be supported by reasons and shall inform the contractor of his or her rights as provided in this subchapter. Specific findings of fact shall not be required, but, if made, shall not be binding in any subsequent proceeding.

(3) This subsection shall not apply to a claim or dispute for penalties or forfeitures prescribed by a law or rule which another District government agency is specifically authorized to administer, settle, or determine.

(4) This subsection shall not authorize the contracting officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(b) The decision of the contracting officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced as authorized by § 2-360.04.

(c) This subchapter shall not prohibit the contracting officer from including a clause in District government contracts requiring that pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the decision of the contracting officer.

(Apr. 8, 2011, D.C. Law 18-371, § 906, 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-308.03. history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 18-371. — For

CASE NOTES

In general.

Board of Contract Appeals' application of rule requiring appellant, who in all cases was a contractor, from decision of Director of Department of Administrative Services to file complaint setting forth its claims was unreasonable where District of Columbia was party asserting claims. D.C. Code 1981, §§ 1-1181.1 et seq., 1-1189.3. *Fry & Welch Assocs., P.C. v. District of Columbia Contract Appeals Bd.*, 664 A.2d 1230, 1995 D.C. App. LEXIS 177 (1995).

Court of Appeals could not consider whether District of Columbia Procurement Practices Act (DCPPA) could retroactively confer jurisdiction on Director of Department of Administrative Services to decide District of Columbia's breach of contract claims against contractor where Board of Contract Appeals' did not consider jurisdictional issue. D.C. Code 1981, § 1-1181.1 et seq. *Fry & Welch Assocs., P.C. v. District of Columbia Contract Appeals Bd.*, 664 A.2d 1230, 1995 D.C. App. LEXIS 177 (1995).

§ 2-359.07. Debarment and suspension.

(a)(1) After reasonable notice to a person, and reasonable opportunity to be heard:

(A) The CPO shall debar a person from consideration for award of contracts or subcontracts for any conviction under subsection (c)(1) through (3) of this section, for a judicial determination of a violation under subsection (c)(4)

of this section, or for a CPO determination of a violation under subsection (c)(5) through (7) of this section, unless the CPO makes a finding in writing that it would be contrary to the best interests of the District to do so or the present responsibility of the person is such that a debarment would not be warranted; and

(B) The CPO may debar a person from consideration for award of contracts or subcontracts if one or more of the causes listed in subsection (b) of this section exist.

(2) The debarment shall not be for a period of more than 5 years.

(b)(1) The CPO shall suspend a person from consideration for award of contracts or subcontracts for any conviction listed in subsection (c)(1) through (3) of this section, for a judicial determination of a violation under subsection (c)(4) or (5) of this section, or for a CPO determination of a violation under subsection (c)(5) through (7) of this section, unless the CPO makes a finding in writing that it would be contrary to the best interests of the District to do so.

(2) The CPO may suspend a person from consideration for award of contracts or subcontracts if the person is charged with the commission of any offense described in subsection (c) of this section and if the CPO makes a finding in writing that such suspension would be in the best interests of the District unless the present responsibility of the person is such that a suspension would not be warranted.

(c) Causes for debarment or suspension include the following:

(1) Conviction for the commission of a criminal offense incident to obtaining, or attempting to obtain, a public or private contract or subcontract or in the performance of the contract or subcontract;

(2) Conviction under this chapter or under any other District, federal, or state law for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity which currently affects the contractor's responsibility as a District government contractor;

(3) Conviction under District, federal, or state antitrust laws arising out of the submission of bids or proposals;

(4) A violation under subchapter I of Chapter 3B of this chapter [§ § 2-381.01 through 2-381.09];

(5) A false assertion of certified business enterprise status or eligibility as defined in subchapter IX-A of Chapter 2 of this title; [§ 2-218.01 et seq.]; or

(6) A violation of contract provisions, as set forth below, of a character which is regarded by the CPO to be sufficiently serious to justify debarment action:

(A) Willful failure, without good cause, to perform in accordance with the specifications or within the time limit provided in the contract; or

(B) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms or conditions of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be bases for debarment; or

(7) Any other cause the CPO determines to be sufficiently serious and

compelling to affect responsibility as a District government contractor, including debarment by another governmental entity for any cause listed in rules.

(d)(1) After reasonable notice to a person and reasonable opportunity to be heard, the CPO may debar the person from consideration for award of any contract or subcontract if the CPO receives written notification from the Chairman of the Council or the chairperson of a Council committee that the person has willfully failed to cooperate in a Council or Council committee investigation conducted pursuant to § 1-204.13.

(2) The debarment shall be for a period of 5 years, unless the CPO receives written notification during the 5-year period from the Chairman of the Council or the chairperson of a Council committee that the debarred business has cooperated in the investigation referred to in paragraph (1) of this subsection.

(3) For purpose of this subsection, the term “willfully failed to cooperate” means:

(A) Intentionally failed to attend and give testimony at a public hearing convened in accordance with the Rules of Organization and Procedure for the Council; and

(B) Intentionally failed to provide documents, books, papers, or other information upon request of the Council or a Council committee.

(e) The CPO shall issue a written decision to debar or suspend a person. The decision shall:

(1) State the relevant facts and the reasons for the action taken;

(2) Describe the present responsibility of the person;

(3) Describe whether the debarment is in the best interests of the District; and

(4) Inform the debarred or suspended person of the right to judicial or administrative review as provided in this chapter.

(f) A copy of the decision pursuant to subsection (e) of this section shall be final and conclusive unless fraudulent or unless the debarred or suspended person appeals to the Contract Appeals Board within 60 days of receipt of the CPO’s decision by the person.

(g) The filing of an action pursuant to subsection (f) of this section shall not stay the CPO’s decision.

(h)(1) Unless otherwise indicated in the debarment or suspension decision, the debarment or suspension of a person shall be effective for all District government agencies.

(2) Unless otherwise indicated in the debarment or suspension decision, the debarment or suspension of a person shall constitute a debarment or suspension of any affiliate of that person.

(i) If a person is charged with or convicted of committing any offense listed in subsection (c)(1) through (5) of this section, the Office of the Attorney General for the District of Columbia or the United States Attorney, whoever is responsible for prosecuting the charge, shall immediately notify the CPO of the charge or conviction and shall provide such information to the CPO as may otherwise be permitted by law to enable the CPO to take any action authorized by this section. The CPO, in turn, shall immediately notify both the Office of the Attorney General for the District of Columbia and the United States Attorney of any action taken or finding made under this section.

(Apr. 8, 2011, D.C. Law 18-371, § 907, 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-308.04. history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 18-371. — For

§ 2-359.08. Claims by contractors against the District government.

(a) All claims by a contractor against the District government arising under or relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision.

(b) Within 120 days after receipt of a claim, the contracting officer shall issue a decision, whenever possible taking into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.

(c) Any failure by the contracting officer to issue a decision on a contract claim within the required time period shall be deemed to be a denial of the claim and shall authorize the commencement of an appeal on the claim as otherwise provided in this subchapter.

(d)(1) If a contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the contractor, the contractor shall be liable to the District government for an amount equal to the unsupported part of the claim in addition to all costs to the District government attributable to the cost of reviewing that part of the contractor's claim.

(2) Liability under this section shall be determined within 6 years of the commission of the misrepresentation of fact or fraud.

(Apr. 8, 2011, D.C. Law 18-371, § 908, 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-308.05. history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 18-371. — For

CASE NOTES

In general.

Claims of contractor that provided independent living services to older youth in District of Columbia foster care system, that the District deprived them of their property interest in their contracts by bargaining coercively, underpaying for services, and by not compensating them for period contractor rendered services without a contract, were classic breach of contract claims which could be addressed through ordinary judicial process or through the District's administrative contract review process and, thus, the claims did not set forth due process violations. *Jones & Assocs. v. District of Columbia*, 797 F.Supp.2d 129, 2011 U.S. Dist. LEXIS 77167 (2011).

Failure of District of Columbia Contract Appeals Board to set hearing date after nearly four years did not establish futility or inadequacy of administrative remedy and did not excuse contractor from requirement to exhaust administrative remedies; contractor made no showing that Board was unwilling to consider claims or that it was predisposed to find against contractor; and Board was busy overseeing discovery and ruling on parties' various motions. *D.C. Code 1981, § 1-1181.1 et seq. Dano Resource Recovery v. District of Columbia*, 566 A.2d 483, 1989 D.C. App. LEXIS 234 (1989).

Exhaustion doctrine does not preclude, but rather defers, judicial review until after expert administrative body has built factual record

and rendered final decision. *Dano Resource Recovery v. District of Columbia*, 566 A.2d 483, 1989 D.C. App. LEXIS 234 (1989).

Absent clear indication to contrary, District of Columbia Procurement Practices Act and its provision for exhaustion of administrative remedies before judicial review was sought applied to contracts entered into before Act's effective

date, notwithstanding contractor's contention that Act provision pursuant to which no procurement rule or regulation was to change any preexisting contract commitment reflected such contrary intent. D.C. Code 1981, §§ 1-1182.5(c), 1-1188.5. *Dano Resource Recovery v. District of Columbia*, 566 A.2d 483, 1989 D.C. App. LEXIS 234 (1989).

§ 2-359.09. Interest.

Interest on amounts found due to a contractor on claims shall be payable at a rate set in § 28-3302(b) applicable to judgments against the District government from the date the contracting officer receives the claim until payment of the claim. Interest on amounts found due to the District from a contractor on claims shall be payable at the rate set in § 28-3302(b) applicable to judgments against the District government from the date the contractor receives a contracting officer's written decision asserting the claim on behalf of the District until payment of the claim.

(Apr. 8, 2011, D.C. Law 18-371, § 909, 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-308.06.

history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 18-371. — For

CASE NOTES

In general.

Interest due, if any, on contractor's claim for equitable adjustment under terminated contract with District of Columbia, to provide information regarding downtown traffic, would be determined in accordance with rules and regu-

lations of District rather than rates allegedly applicable under federal law, even though federal funds were used to pay contractor. D.C. Code 1981, § 1-1188.6. *District of Columbia v. Organization for Env'tl. Growth*, 700 A.2d 185, 1997 D.C. App. LEXIS 203 (1997).

§ 2-359.10. Employees subject to employee conduct standards of Merit Personnel Act.

(a) Except for those District government employees employed by agencies not subject to Chapter 6 of Title 1 [§ 1-601.01 et seq.], District government employees who participate in the procurement process shall be subject to the provisions of subchapter XVIII of Chapter 6 of Title 1 [§ 1-618.01 et seq.].

(b) Participation in the procurement process shall include involvement, either directly or indirectly, in:

- (1) The decision, approval, disapproval, recommendation, or preparation of any part of a purchase request;
- (2) Influencing the content of any specification or purchase standard;
- (3) Rendering of advice;
- (4) An investigation or audit; or
- (5) Any other advisory capacity pertaining to any contract, subcontract, solicitation, or proposal.

(Apr. 8, 2011, D.C. Law 18-371, § 910, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

Subchapter X. Contract Appeals Board.

§ 2-360.01. Creation of Contract Appeals Board.

(a)(1) There is established in the executive branch of the District government a Contract Appeals Board (“Board”) to be composed of a chairperson and 2 other members.

(2) The members shall be appointed as administrative judges in the Career Service and shall not be removed except for cause.

(3) The chairperson and members of the Board shall be appointed by the Mayor with the advice and consent of the Council, and shall serve full-time.

(b) The Board shall adopt operational procedures, not inconsistent with this chapter, necessary to execute the Board’s functions. The chairperson’s authority may be delegated to the Board’s members and employees, but only members of the Board may hear appeals and issue decisions on the appeals. The attendance of at least 2 members of the Board shall constitute a quorum.

(c)(1) The Office of the Attorney General may provide for the Board those goods, materials, and administrative services that the chairperson requests, on a basis, reimbursable or otherwise, agreed upon between the Office of the Attorney General and the chairperson.

(2) All costs of hearings before the Board, including witness fees and costs of transcripts, shall be borne by the agency from which the appeal originated through direct billing.

(3) The Board shall use any fees received pursuant to § 2-360.03 at the discretion of the Chairperson to improve the Board’s services and programs, including the option to provide incentive awards to Board personnel consistent with subchapter XIX of Chapter 6 of Title 1 [§ 1-619.01 et seq.].

(Apr. 8, 2011, D.C. Law 18-371, § 1001, 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-309.01. history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 18-371. — For

§ 2-360.02. Terms and qualifications of members.

(a)(1) The term of office of the chairperson and other full-time members of the Board shall be 4 years, except that in making the initial appointment, the Mayor shall appoint one members for a term of one year, one member for a term of 2 years, and the chairperson for a term of 3 years. The terms of the chairperson and members first appointed shall begin on the date that a majority of the first members are sworn in, which shall become the anniversary date for all subsequent appointments. Thereafter, their successors shall be appointed for terms of 4 years, or for the balance of any unexpired term, but members may continue to serve beyond their terms until their successors take office.

(2) The Mayor shall endeavor to nominate persons for appointment to the Board at least 30 days before the expiration of a member's term.

(3) Members may be reappointed for succeeding terms.

(4) If there is no chairperson, or if the chairperson is absent or unable to serve, the member senior in length of service shall be acting chairperson.

(b) The chairperson and members of the Board shall be attorneys licensed to practice law in the District who shall have no less than 5 years experience in public contract law. All members of the Board shall have experience in the areas of procurement and contract law.

(c) Notwithstanding the provisions of this section, current members of the Contract Appeals Board, appointed pursuant to the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; 32 DCR 7396) [§ 2-301.01 et seq.], serving on April 8, 2011, shall be considered qualified and may continue to serve as members of the Board.

(Apr. 8, 2011, D.C. Law 18-371, § 1002, 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-309.02. history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 18-371. — For

§ 2-360.03. Jurisdiction of Board.

(a) The Board shall be the exclusive hearing tribunal for, and shall review and determine de novo:

(1) Any protest of a solicitation or award of a contract addressed to the Board by any actual or prospective bidder, offeror, or the contractor who is aggrieved in connection with the solicitation or award of a contract;

(2) Any appeal by a contractor from a final decision by the contracting officer on a claim by a contractor, when the claim arises under or relates to a contract; and

(3) Any claim by the District against a contractor, when such claim arises under or relates to a contract.

(b) Jurisdiction of the Board shall be consistent with the coverage of this chapter as set forth in § 2-351.05, except that the Board may enter into fee-for-service agreements with agencies, departments, boards, commissions, and instrumentalities of the District or other public entities that are not subject to the Board's jurisdiction. The agreements shall provide for the Board to resolve contract disputes, including appeals and protests of those agencies, departments, boards, commissions, and instrumentalities. With agreements of the parties, the Board may provide alternate dispute resolution services.

(Apr. 8, 2011, D.C. Law 18-371, § 1003, 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-309.03. history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 18-371. — For

CASE NOTES

ANALYSIS

Arbitration.

Distribution of governmental powers.

Due process.

In general.

Judicial review of administrative decisions.

Jurisdiction.

Review.

Standing.

Arbitration.

Provision of the Federal Arbitration Act (FAA) requiring enforcement of arbitration agreements did not preclude the District of Columbia from refusing to arbitrate disputes arising out of government contracts; the Procurement Practices Act (PPA) precludes government contracting officers from even entering into arbitration agreements, and the decision of the District's legislature to centralize dispute resolution regarding government contracts in an administrative forum was therefore untouched by the FAA's general command that private arbitration agreements be enforced. *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

The Procurement Practices Act (PPA) which makes the Contract Appeals Board (CAB) the sole hearing tribunal for resolution of disputes arising under or relating to a government contract withholds from the District of Columbia's contracting officers the power to agree to arbitration or, for that matter, to agree to any form of dispute resolution other than administrative. *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

Distribution of governmental powers.

Council of District of Columbia does not have authority to withdraw power given by Congress to local courts under All Writs Act to issue injunctions pending Contract Appeals Board (CAB) decision which power is so closely tied to court's jurisdiction. 18 U.S.C. §§ 1651, 1651(a); D.C. Code 1981, §§ 1-1189.3, 1-1502(8). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Due process.

Claims of contractor that provided independent living services to older youth in District of Columbia foster care system, that the District deprived them of their property interest in their contracts by bargaining coercively, underpaying for services, and by not compensating them for period contractor rendered services without a contract, were classic breach of contract claims which could be addressed through ordinary judicial process or through the District's administrative contract review process and, thus, the claims did not set forth due

process violations. *Jones & Assocs. v. District of Columbia*, 797 F.Supp.2d 129, 2011 U.S. Dist. LEXIS 77167 (2011).

District of Columbia's (D.C.) Contract Appeals Board (CAB) provided adequate post-deprivation remedy for D.C. agency's allegedly improper failure to pay contingency fees for subcontractor's work on Medicare/Medicaid-related payments and reimbursements, and thus no due process violation occurred from nonpayment; CAB had jurisdiction over contracts involving D.C. Chief Financial Officer. *Davis & Assocs. v. District of Columbia*, 501 F.Supp.2d 77, 2007 U.S. Dist. LEXIS 59655 (2007).

In general.

District of Columbia seeking a preliminary injunction against arbitration of dispute arising out of government contract was substantially likely to prevail on the merits of its claim that it was not bound by the ultra vires act of a contracting officer purporting to agree to arbitration. *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

There is no necessary inconsistency between Procurement Practices Act provision granting Contract Appeals Board (CAB) exclusive jurisdiction to review protest of solicitation or award of contract and superior court's authority under All Writs Act to issue emergency relief pending outcome of CAB proceedings. 18 U.S.C. §§ 1651, 1651(a); D.C. Code 1981, §§ 1-1189.3, 1-1502(8). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Superior court's power under All Writs Act to grant emergency relief pending decision by Contract Appeals Board (CAB) does not give it authority to function as competitor of CAB or to ignore CAB's findings; superior court is not authorized as alternative hearing tribunal for bid protest. D.C. Code 1981, § 1-1189.3; 18 U.S.C. § 1651. *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Judicial review of administrative decisions.

The fact that the party moving for reconsideration has previously presented a given argument is not dispositive under Contract Appeals Board (CAB) rule prohibiting reconsideration based on arguments substantially identical to those already considered and rejected by the CAB; the rule bars only arguments that the CAB already considered and rejected. *Prince Constr. Co. v. District of Columbia Contract Appeals Bd.*, 892 A.2d 380, 2006 D.C. App. LEXIS 28 (2006).

Court of Appeals reviews decisions of the District of Columbia Contract Appeals Board

deferentially. *Belcon Inc. v. D.C. Water & Sewer Auth.*, 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

So long as a finding of the District of Columbia Contract Appeals Board is supported by substantial evidence, the Court of Appeals must accept it, even though there may also be substantial evidence in the record to support a contrary finding. *Belcon Inc. v. D.C. Water & Sewer Auth.*, 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

The Court of Appeals' review of legal rulings of the District of Columbia Contract Appeals Board is *de novo*, for it is emphatically the province and duty of the judicial department to say what the law is. *Belcon Inc. v. D.C. Water & Sewer Auth.*, 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

Court of Appeals accords "great weight" to the District of Columbia Contract Appeals Board's construction of a government contract, so long as that construction is not unreasonable. *Belcon Inc. v. D.C. Water & Sewer Auth.*, 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

Bid protest is not "contested case," within meaning of District of Columbia Administrative Procedure Act (DCAPA) allowing District of Columbia Court of Appeals to hear direct appeal of agency decision only in contested case, and thus, disappointed bidder seeking relief from decision on bid protest by Contract Appeals Board (CAB) must resort in first instance to superior court. D.C. Code 1981, §§ 1-1189.3, 1-1502(8), 1-1510(a); 18 U.S.C. §§ 1651, 1651(a). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Superior court had jurisdiction to review Contract Appeals Board's (CAB) decisions in bid protest, and thus, superior court also possessed power under All Writs Act to issue temporary relief to disappointed bidder, even though CAB had not yet issued decision. D.C. Code 1981, §§ 1-233(a)(4), 1-1181.1 to 1-1192.6, 1-1189.3, 1-1502(8), 1-1510(a), 11-921; 18 U.S.C. §§ 1651, 1651(a). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Jurisdiction.

Contractor's claim for money due for services rendered in filing Medicare and Medicaid cost reports was a "claim" within the meaning of statute giving exclusive jurisdiction to Contract Appeals Board (CAB) over any appeal by contractor from a final decision by the contracting officer on a claim arising under or relating to a contract. *Davis & Assocs. v. Williams*, 892 A.2d 1144, 2006 D.C. App. LEXIS 83 (2006).

Contractor's failure to submit claim to the contracting officer for a final decision did not make inapplicable statute giving exclusive ju-

risdiction to Contract Appeals Board (CAB) over any appeal by contractor from a final decision by the contracting officer on a claim arising under or relating to a contract; the contractor could not avoid the jurisdiction of the CAB by simply failing to submit an otherwise cognizable. *Davis & Assocs. v. Williams*, 892 A.2d 1144, 2006 D.C. App. LEXIS 83 (2006).

Contract Appeals Board (CAB) had jurisdiction over contractor's claim for payment of contingent fee under contract requiring contractor to complete Medicare and Medicaid cost reports in order to comply with timely filing requirements, even though the contractor sought declaratory judgment that Medicaid/Medicare payments were dedicated revenue to be deposited into a special fund pursuant to enabling statute; the contract did not condition entitlement to a contingent fee upon the District of Columbia's deposit of its Medicaid/Medicare receipts into this dedicated fund, and the CAB thus did not need to interpret the enabling statute. *Davis & Assocs. v. Williams*, 892 A.2d 1144, 2006 D.C. App. LEXIS 83 (2006).

Contract Appeals Board (CAB) has primary jurisdiction to consider claimant's contractual disputes with the District of Columbia. *Davis & Assocs. v. Williams*, 892 A.2d 1144, 2006 D.C. App. LEXIS 83 (2006).

The District of Columbia Contract Appeals Board (CAB) had jurisdiction over the dispute between contractor and District's Chief Financial Officer (CFO) concerning termination of procurement contract for conversion of personnel payroll system; the contract was for procurement of goods and services and was not exempted from the Procurement Practices Act (PPA), and the statute making the CFO exempt from the PPA during a control year applied to professional services contracts, not procurements. *Abadie v. D.C. Contract Appeals Bd.*, 843 A.2d 738, 2004 D.C. App. LEXIS 60 (2004).

The District of Columbia Contract Appeals Board (CAB) has jurisdiction to hear a contractor's appeal from a contracting officer's final decision, including appeals involving contract disputes. *Abadie v. D.C. Contract Appeals Bd.*, 843 A.2d 738, 2004 D.C. App. LEXIS 60 (2004).

The jurisdiction of the Contract Appeals Board (CAB) as the hearing tribunal for claims arising under or relating to a government contract is exclusive, to the exclusion of any other forum such as arbitration, regarding both contractor appeals and any claim by the District of Columbia against a contractor. *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

Contract Appeals Board (CAB), rather than the Superior Court, had jurisdiction over nursing home employees' claim against the District of Columbia for unpaid wages, which was premised on contention that they were third party beneficiaries of a written contract to manage

the home, executed between the District, as owner of the home, and a private corporation, as claim was subject to the Procurement Practices Act (PPA). *Lawlor v. District of Columbia*, 758 A.2d 964, 2000 D.C. App. LEXIS 206 (2000).

Contract Appeals Board (CAB), rather than the Superior Court, had jurisdiction over nursing home employees' claim against the District of Columbia for unpaid wages that was based on allegation that the District made an oral contract to pay the wages, where employees' other claim, that they were beneficiaries of a written contract to manage the home, executed between the District as owner of the home and a private corporation, was subject to the Procurement Practices Act (PPA). *Lawlor v. District of Columbia*, 758 A.2d 964, 2000 D.C. App. LEXIS 206 (2000).

Contract Appeals Board had jurisdiction over both the entitlement and quantum aspects of contractor's claim arising from District of Columbia's default termination of government contract for construction of parking facility, in case in which contractor filed claim with Department of Administrative Services seeking conversion of termination to one for the convenience of District, appeal was authorized by administrative "deemed denial," and contractor then appealed to Board, requesting change to a convenience termination and corresponding adjustment of contract price. D.C. Code 1981, § 1-1189.3(a)(2). *District of Columbia v. Kora & Williams Corp.*, 743 A.2d 682, 1999 D.C. App. LEXIS 303 (1999).

Review.

While as to questions of law the District of Columbia Contract Appeals Board's (CAB) decision is not final or conclusive, nonetheless, the Court of Appeals gives careful consideration and great respect to its interpretation because legal interpretations by tribunals having expertise are helpful even if not compelling; this deference is especially proper in cases involving

mixed questions of fact and law where the Board and the Court on review must examine a detailed record of the parties' course of dealing and performance. *Eagle Maint. Servs. v. D.C. Contract Appeals Bd.*, 893 A.2d 569, 2006 D.C. App. LEXIS 88 (2006).

Board of Contract Appeals' application of rule requiring appellant, who in all cases was a contractor, from decision of Director of Department of Administrative Services to file complaint setting forth its claims was unreasonable where District of Columbia was party asserting claims. D.C. Code 1981, §§ 1-1181.1 et seq., 1-1189.3. *Fry & Welch Assocs., P.C. v. District of Columbia Contract Appeals Bd.*, 664 A.2d 1230, 1995 D.C. App. LEXIS 177 (1995).

Party who disputes public procurement process on issue arising out of contract performance, suspension, or debarment from consideration for contract award must appeal to Contract Appeals Board within 90 days. D.C. Code 1981, §§ 1-1189.3, 1-1189.4. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 1988 D.C. App. LEXIS 208 (1988).

Standing.

Unsuccessful bidder on contract with District of Columbia government to administer employee health plan had standing to seek relief in superior court on its claim that its bid had not been fairly and honestly considered, where unsuccessful bidder lost substantial contract that it otherwise stood fair chance of winning, injury was fairly traceable to district's alleged breach of its own procedures and regulations, claimed injury could be redressed by court action, unsuccessful bidder sought to safeguard interest in fair competition arguably within zone of interest to be protected or regulated by statute in question, and bidder was not merely raising generalized grievance or seeking to vindicate rights of third parties. D.C. Code 1981, §§ 1-1189.3, 1-1189.8(e)(1). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

§ 2-360.04. Contractor's right of appeal to Board.

(a) Except as provided in § 2-359.08, within 90 days after the date of receipt of a decision of the contracting officer, the contractor may appeal the decision to the Board by filing a complaint.

(b) The Board shall provide, to the fullest extent practicable, informal, expeditious, and inexpensive resolution of disputes, shall issue a decision in writing, or take other appropriate action on each appeal submitted, and shall mail or otherwise furnish a copy of the decision to the contractor and the Mayor. All decisions which constitute a final adjudication of appeal on the merits shall be published in the District of Columbia Register.

(c)(1) The rules of the Board shall include a procedure for the accelerated

disposition of any appeal from a decision of the contracting officer if the amount in dispute is \$50,000 or less.

(2) The procedure shall be applicable at the sole election of the contractor.

(3) Appeals under the accelerated procedure shall be resolved within 180 days from the date the contractor elects to utilize the procedure.

(d)(1) The rules of the Board shall include a small claims procedure for the expedited disposition of any appeal from a decision of the contracting officer if the amount in dispute is \$10,000 or less. The procedure shall be applicable at the sole election of the contractor.

(2) The small claims procedure shall provide for simplified rules of procedure to facilitate the decision of any appeal. The appeals may be decided by a single member of the Board with any concurrences required by rule.

(3) Appeals under the small claims procedure shall be resolved, whenever possible, within 90 days from the date on which the contractor files an appeal.

(4) A decision against the District government or the contractor reached under the small claims procedure shall be final and conclusive and shall not be set aside except in cases of fraud.

(5) Administrative determinations and final decisions under the small claims procedure shall have no value as precedent for future cases under this subchapter.

(Apr. 8, 2011, D.C. Law 18-371, § 1004, 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-309.04. history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 18-371. — For

CASE NOTES

In general.

The District of Columbia Contract Appeals Board (CAB) had jurisdiction over the dispute between contractor and District's Chief Financial Officer (CFO) concerning termination of procurement contract for conversion of personnel payroll system; the contract was for procurement of goods and services and was not exempted from the Procurement Practices Act (PPA), and the statute making the CFO exempt from the PPA during a control year applied to professional services contracts, not procurements. *Abadie v. D.C. Contract Appeals Bd.*, 843 A.2d 738, 2004 D.C. App. LEXIS 60 (2004).

Board of Contract Appeals' application of rule requiring appellant, who in all cases was a contractor, from decision of Director of Department of Administrative Services to file complaint setting forth its claims was unreasonable where District of Columbia was party asserting claims. D.C. Code 1981, §§ 1-1181.1 et seq.,

1-1189.3. *Fry & Welch Assocs., P.C. v. District of Columbia Contract Appeals Bd.*, 664 A.2d 1230, 1995 D.C. App. LEXIS 177 (1995).

Party who disputes public procurement process on issue arising out of contract performance, suspension, or debarment from consideration for contract award must appeal to Contract Appeals Board within 90 days. D.C. Code 1981, §§ 1-1189.3, 1-1189.4. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 1988 D.C. App. LEXIS 208 (1988).

Contractor's appeal of decision of Department of Administrative Services to Contract Appeals Board may present contested case involving trial-type hearing, although contractor's protest will not result in contested case permitting review by Court of Appeals. D.C. Code 1981, §§ 1-1189.4, 1-1189.6, 1-1189.8. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 1988 D.C. App. LEXIS 208 (1988).

§ 2-360.05. Appeal of Board decisions.

(a) A contractor may appeal a Board decision to the District of Columbia

Court of Appeals within 120 days after the date of receipt of a copy of the decision.

(b) If the CPO determines that an appeal should be taken, the CPO, with the prior approval of the Office of the Attorney General, may appeal the Board's decision to the District of Columbia Court of Appeals for judicial review within 120 days from the date of the receipt of the Board's decision.

(Apr. 8, 2011, D.C. Law 18-371, § 1005, 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-309.05. history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 18-371. — For

CASE NOTES

ANALYSIS

In general.
Protests.

In general.

The Court of Appeals had power under the All Writs Act to issue preliminary injunction against arbitration of dispute over government contract; appellate jurisdiction was implicated in the ultimate resolution of the issues of arbitrability and the jurisdiction of the Contract Appeals Board (CAB) to decide, in the first instance, the arbitrability of contract disputes under the District of Columbia Procurement Practices Act (PPA). *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

Director of Department of Public Works (DPW) did not have authority under Procurement Practices Act to bring action challenging Contract Appeals Board's (CAB) decision in bid protest case; Act reserved to Department of Administrative Services (DAS) exclusive right to seek judicial review of CAB decisions. D.C. Code 1981, § 1-1189.5(b). *Francis v. Recycling Solutions*, 695 A.2d 63, 1997 D.C. App. LEXIS 138 (1997).

While District of Columbia has authority to appeal Contract Appeals Board's (CAB) bid protest decision, Procurement Practices Act does not leave room for anyone other than Department of Administrative Services (DAS) to do so. D.C. Code 1981, § 1-1189.5(b). *Francis v. Recycling Solutions*, 695 A.2d 63, 1997 D.C. App. LEXIS 138 (1997).

Provision of Procurement Practices Act requiring Department of Administrative Services (DAS) to obtain Corporation Counsel's approval of any suit seeking review of Contract Appeals Board's (CAB) decision does not authorize Corporation Counsel to delegate to someone else authority to initiate judicial review. D.C. Code 1981, § 1-1189.5(b). *Francis v. Recycling Solutions*, 695 A.2d 63, 1997 D.C. App. LEXIS 138 (1997).

Contractor which did not challenge power of Contract Appeals Board to act through chairman but, rather challenged only authority of chairman to act alone, absent stipulation of parties, failed to raise quorum issue before Board and, for purposes of appeal, acquiescence was tantamount to stipulation that Board could act. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 1988 D.C. App. LEXIS 208 (1988).

Protests.

Challenges to cancellations of invitations for bids are protests and may not be appealed to Court of Appeals. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 1988 D.C. App. LEXIS 208 (1988).

Contract Appeals Board was not presented with contested case and its decision was not appealable to Court of Appeals where contractor challenged cancellation of bid in proceeding that should have been brought as protest, notwithstanding contractor's allegation that proceeding was appeal of Board's decision. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 1988 D.C. App. LEXIS 208 (1988).

§ 2-360.06. Oaths, discovery, and subpoena power.

(a) A member of the Board may administer oaths to witnesses, authorize depositions and discovery proceedings, and require by subpoena the attendance of witnesses and production of books and papers for the taking of

testimony or evidence by deposition or in the hearing of an appeal by the Board.

(b) If any witness, having been personally served with a subpoena, shall neglect or refuse to obey the subpoena issued, on written application, the Board may report the fact of the neglect or refusal to a judge of the Superior Court for the District of Columbia who may compel obedience to the subpoena.

(Apr. 8, 2011, D.C. Law 18-371, § 1006, 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-309.06. history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 18-371. — For

CASE NOTES

Due process.

District of Columbia's (D.C.) Contract Appeals Board (CAB) provided adequate post-deprivation remedy for D.C. agency's allegedly improper failure to pay contingency fees for subcontractor's work on Medicare/Medicaid-re-

lated payments and reimbursements, and thus no due process violation occurred from nonpayment; CAB had jurisdiction over contracts involving D.C. Chief Financial Officer. *Davis & Assocs. v. District of Columbia*, 501 F.Supp.2d 77, 2007 U.S. Dist. LEXIS 59655 (2007).

§ 2-360.07. Actions in court; judicial review of Board decisions.

In the event of an appeal by a contractor or the CPO from a decision of the Board pursuant to § 2-360.05, notwithstanding any contract provision, rule, or rule of law to the contrary, the decision of the Board on questions of fact shall be final and conclusive and shall not be set aside unless the decision is fraudulent, arbitrary, capricious, or so grossly erroneous as to necessarily imply bad faith, or if the decision is not supported by substantial evidence.

(Apr. 8, 2011, D.C. Law 18-371, § 1007, 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-309.07. history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 18-371. — For

CASE NOTES

ANALYSIS

Evidence.

Exhaustion doctrine.

Review.

Evidence.

Contractor had the burden to prove that its termination costs, under the contract with the District, were reasonable, without the aid of any presumption, and thus the District's failure to disprove the reasonableness of contractor's costs before the Contract Appeals Board (CAB) was not determinative of the proper award due contractor for termination of the contract under which contractor was to conduct a survey of

traffic conditions. *Abadie v. Org. for Env'tl. Growth, Inc.*, 806 A.2d 1225, 2002 D.C. App. LEXIS 539 (2002).

There was insufficient evidence to supported Contract Appeals Board's (CAB) finding that contractor was entitled to an award of \$193,211.77 in termination costs regarding its contract with District to conduct a traffic condition survey; the \$500,000 estimate of the survey cost included significant costs that were not attributable to the contractor's work, the \$500,000 was a general estimate that was not based on precise calculations, and the \$500,000 was based on the total cost of the completed project, but contractor never completed the project. *Abadie v. Org. for Env'tl. Growth, Inc.*,

806 A.2d 1225, 2002 D.C. App. LEXIS 539 (2002).

Exhaustion doctrine.

Exhaustion doctrine does not preclude, but rather defers, judicial review until after expert administrative body has built factual record and rendered final decision. *Dano Resource Recovery v. District of Columbia*, 566 A.2d 483, 1989 D.C. App. LEXIS 234 (1989).

Review.

Given the Contract Appeals Board's expertise, Court of Appeals gives careful consideration to the Board's interpretation on questions of law because legal interpretations by tribunals having expertise are helpful even if not compelling; Court therefore accords great weight to the Board's construction of a government contract, so long as that construction is not unreasonable. *Unfoldment, Inc. v. D.C. Contract Appeals Bd.*, 909 A.2d 204, 2006 D.C. App. LEXIS 575 (2006).

On legal questions, then, the ruling of the District of Columbia Contract Appeals Board (CAB) is neither final nor conclusive. *Abadie v. D.C. Contract Appeals Bd.*, 843 A.2d 738, 2004 D.C. App. LEXIS 60 (2004).

Given the expertise of the District of Columbia Contract Appeals Board (CAB), the Court of Appeals gives careful consideration to the CAB's interpretation of its governing statute because legal interpretations by tribunals having expertise are helpful even if not compelling. *Abadie v. D.C. Contract Appeals Bd.*, 843 A.2d 738, 2004 D.C. App. LEXIS 60 (2004).

Court of Appeals reviews decisions of the District of Columbia Contract Appeals Board deferentially. *Belcon Inc. v. D.C. Water & Sewer Auth.*, 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

Evidence supporting a decision of the District of Columbia Contract Appeals Board is "substantial," for purposes of review on appeal, when a reasonable mind might accept it as adequate to support a conclusion. *Belcon Inc. v. D.C. Water & Sewer Auth.*, 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

So long as a finding of the District of Columbia Contract Appeals Board is supported by substantial evidence, the Court of Appeals must accept it, even though there may also be substantial evidence in the record to support a contrary finding. *Belcon Inc. v. D.C. Water & Sewer Auth.*, 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

§ 2-360.08. Protest procedures.

(a) This section shall apply to a protest of a solicitation or award of a contract addressed to the Board by any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract.

(b)(1) A protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, shall be protested not later than the next closing time for receipt of proposals following the incorporation.

(2) In cases other than those covered in paragraph (1) of this subsection, protests shall be filed not later than 10 business days after the basis of protest is known or should have been known, whichever is earlier.

(c)(1) Within one business day of receipt of the protest, the Board shall notify the contracting officer that the protest has been filed. Except as provided in this section, no contract shall be awarded in any procurement after the contracting officer has received the notice and while the protest is pending. If an award has already been made but the contracting officer receives notice within 11 business days after the date of award, the contracting officer shall immediately direct the awardee to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the District under the contract. Except as provided in this

section, performance and related activities suspended pursuant to this section shall not be resumed while the protest is pending.

(2) Performance under a protested procurement may proceed, or award may be made, while a protest is pending only if the CPO makes a written determination, supported by substantial evidence, that urgent and compelling circumstances that significantly affect interests of the District will not permit waiting for the decision of the Board concerning the protest. A copy of the determination shall be provided within one business day of issuance to both the Board and the protester.

(d) On any direct protest pursuant to subsection (a) of this section, the Board shall decide whether the solicitation or award was in accordance with the applicable law, rules, and terms and conditions of the solicitation. The proceeding shall be de novo and the decision of the Board shall be issued within 60 business days from the date on which the protest is filed. Any prior determinations by administrative officials shall not be final or conclusive. If the Board determines that a contract is void pursuant to § 2-359.02, the Board shall direct that the contract be cancelled and cause a determination to be made pursuant to § 2-359.02.

(e) A determination of an issue of fact by the Board under subsection (d) of this section shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

(f)(1) In addition to other relief, the Board may order, when a protest is sustained, that the contract awarded under the solicitation be terminated for the convenience of the District; provided, that the Board shall not direct the award of a contract to a particular person. A determination in this regard shall be based on considerations such as:

- (A) Best interests of the District government;
- (B) Seriousness of the procurement deficiency;
- (C) Existence of prejudice to other bidders;
- (D) Maintaining the integrity of the procurement system;
- (E) Good faith of District government officials and other parties;
- (F) Extent of contract performance; or
- (G) Impact of termination on the agency's activities and mission.

(2) The Board may, when requested, award reasonable bid or proposal preparation costs and costs of pursuing the protest, not including legal fees, if it finds that the District government's actions toward the protester or claimant were arbitrary or capricious.

(g)(1) The Board may dismiss, at any stage of the proceedings, any protest, or portion of a protest, it considers frivolous.

(2) In addition, the Board may require the protester to pay reasonable attorneys' fees, for time counsel spent representing the agency in defending the frivolous protest or its frivolous part. If the entire protest is dismissed on frivolous grounds, it may also assess the protester additional damages for each day the contract was suspended equal to the amount of liquidated damages specified in the contract for late completion of the contract.

(3) The Board shall not determine damages if liquidated damages are not specified.

(4) In addition, counsel for the protester may be suspended or barred from practicing before the Board.

(h) The Board shall adopt rules for exercising its authority under this section.

(Apr. 8, 2011, D.C. Law 18-371, § 1008, 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-309.08. history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 18-371. — For

CASE NOTES

ANALYSIS

In general.
Injunctive relief.
Standing.

In general.

Superior court owes Contract Appeals Board (CAB) deference as primary fact finder in bid protest proceedings. D.C. Code 1981, § 1-1189.8(d). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Protest is decided on written submissions, coupled on occasion with conference, but is not decided by formal hearing attended by interested parties and does not require trial-type hearing. D.C. Code 1981, § 1-1189.8. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 1988 D.C. App. LEXIS 208 (1988).

Contractor's appeal of decision of Department of Administrative Services to Contract Appeals Board may present contested case involving trial-type hearing, although contractor's protest will not result in contested case permitting review by Court of Appeals. D.C. Code 1981, §§ 1-1189.4, 1-1189.6, 1-1189.8. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 1988 D.C. App. LEXIS 208 (1988).

Injunctive relief.

A preliminary injunction against arbitration of dispute arising out of government contract was supported by irreparable harm to the District of Columbia in the form of the unnecessary and additional expense of arbitration, delay of the inevitable proceeding before the Contract Appeals Board (CAB), and the use of a closed conference room to resolve a dispute over a public contract. *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

Balance of harms favored preliminary injunction against arbitration of dispute arising out of government contract; the only harm to the contractor was delay in the event the arbitration clause was enforceable, and the harm to

the District of Columbia was the unnecessary and additional expense of arbitration, delay of the inevitable proceeding before the Contract Appeals Board (CAB), and the use of a closed conference room to resolve a dispute over a public contract. *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

Public interest weighed in favor of preliminary injunction against arbitration of dispute arising out of government contract; if the dispute were arbitrated in another state, there was no assurance that the questions of jurisdiction and arbitrability would be presented to the Court of Appeals for ultimate resolution, and the questions arose primarily under District of Columbia law. *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

Fact that Procurement Practices Act appeared to prohibit Contract Appeals Board (CAB) from enjoining contract award had no bearing on disappointed bidder's standing to seek relief in superior court to enjoin award; disappointed bidder which could demonstrate standing could sue for emergency relief in superior court regardless of CAB's apparent incapacity to issue such relief. D.C. Code 1981, §§ 1-1189.8, 1-1189.8(e)(1). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Provision of Procurement Practices Act appearing to prohibit Contract Appeals Board (CAB) from enjoining contract award does not indicate any intent to withhold judicial review as whole; provision pertains solely to availability of particular remedy from CAB. D.C. Code 1981, § 1-1189.8. *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Provision of Procurement Practices Act appearing to prohibit Contract Appeals Board (CAB) from enjoining contract award does not limit availability of preliminary injunction from superior court; power of superior court to grant interim relief is incidental to superior court's review jurisdiction and cannot be overridden by Procurement Practices Act. D.C.

Code 1981, § 1-1189.8. District of Columbia v. Group Ins. Admin., 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Standing.

Unsuccessful bidder on contract with District of Columbia government to administer employee health plan had standing to seek relief in superior court on its claim that its bid had not been fairly and honestly considered, where unsuccessful bidder lost substantial contract that it otherwise stood fair chance of winning,

injury was fairly traceable to district's alleged breach of its own procedures and regulations, claimed injury could be redressed by court action, unsuccessful bidder sought to safeguard interest in fair competition arguably within zone of interest to be protected or regulated by statute in question, and bidder was not merely raising generalized grievance or seeking to vindicate rights of third parties. D.C. Code 1981, §§ 1-1189.3, 1-1189.8(e)(1). District of Columbia v. Group Ins. Admin., 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Subchapter XI. Miscellaneous Provisions.

§ 2-361.01. Green procurement. [Not funded].

Not funded.

(Apr. 8, 2011, D.C. Law 18-371, § 1101, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

Editor's notes. — Section 1203 of D.C. Law 18-371 provided that this section shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of section 803 Law 18-371 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 18-371, are not in effect.

§ 2-361.02. Payment of stipends authorized.

(a) The contracting officer may pay a stipend to cover a portion of bid or proposal development costs to an unsuccessful responsible offeror that submits a responsive proposal to a solicitation to generate meaningful competition and to ensure that small businesses are not competitively disadvantaged.

(b) The contracting officer shall determine the number and amount of the stipends, if any.

(c) In consideration for paying the stipend fee, the District may use any ideas or information contained in the proposals in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the unsuccessful offerors.

(d)(1) Notwithstanding the other provisions of this section, an unsuccessful offeror may elect to waive the stipend.

(2) If an unsuccessful offeror elects to waive the stipend, the District shall not use ideas and information contained in the offeror's proposal; provided, that this restriction shall not prevent the District from using any idea or information if the idea or information is also included in a proposal of an offeror that accepts the stipend.

(Apr. 8, 2011, D.C. Law 18-371, § 1102, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-361.03. Supply schedule, purchase card, and training funds.

(a) The CPO may charge and collect a fee, in an amount to be determined by rule, on all sales, purchase orders, delivery orders, task orders, and purchase card transactions made under contracts awarded to contractors under the DCSS.

(b) The CPO may charge a fee for training conducted by the procurement training institute established pursuant to § 2-352.06.

(c) Subject to the terms of any memoranda of understanding with the Chief Financial Officer regarding adherence to the applicable requirements of federal grants, loans, or other extensions of credit to the District, the Chief Procurement Officer shall collect any rebates issued to the District by the purchase card issuers under the Purchase Card Program.

(d) All funds received pursuant to this section shall be deposited in the unrestricted fund balance of the General Fund of the District of Columbia.

(Apr. 8, 2011, D.C. Law 18-371, § 1103, 58 DCR 1185; Sept. 14, 2011, D.C. Law 19-21, § 9024, 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21 rewrote subsec. (d).

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 2-351.15.

§ 2-361.04. Transparency in contracting.

(a) The CPO shall establish and maintain on the Internet publicly-available information regarding District procurement. The information shall be made available in machine-readable and searchable format and shall include the following:

(1) The legal authority and rules that govern procurement for all District agencies and instrumentalities, including those exempt from the authority of the CPO;

(2) The names of all personnel with delegated contracting authority; and

(3) For contracts in excess of \$100,000, a copy of the contract and any determinations and findings, contract modifications, change orders, solicitations, or amendments associated with the contract, including those made by District agencies exempt from the authority of the CPO; provided, that the information required by this paragraph shall be made available on the Internet for at least the duration of the underlying contract or 5 years, whichever is longer.

(b) Agencies not subject to the authority of the CPO shall transmit the information required by this section to the CPO for posting on the Internet.

(Apr. 8, 2011, D.C. Law 18-371, § 1104, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-361.05. Acquisition planning.

(a) The CPO shall develop and implement a process by which each agency subject to the CPO's procurement authority shall prepare and submit to the CPO an acquisition plan identifying the size and nature of the anticipated procurement workload for the following fiscal year.

(b) Each agency shall submit its acquisition plan for the following fiscal year to the Council no later than March 20 of each year.

(Apr. 8, 2011, D.C. Law 18-371, § 1105, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-361.06. Rules.

(a)(1) The CPO, pursuant to subchapter I of Chapter 5 of this title [§ 2-501 et seq.], shall issue rules to implement the provisions of this chapter, except subchapter VI of this chapter.

(2) The Department of Real Estate Services, pursuant to subchapter I of Chapter 5 of this title [§ 2-501 et seq.], shall issue rules to implement the provisions of subchapter VI of this chapter.

(b) The existing procurement rules, to the degree that they are consistent with this chapter, shall remain in effect until they are superseded by rules issued in accordance with subsection (a) of this section.

(c) A District government procurement rule or regulation promulgated pursuant to this chapter shall not change in any way a contractual commitment by the District government or of a contractor to the District government which was in existence on the effective date of the rule or regulation.

(Apr. 8, 2011, D.C. Law 18-371, § 1106, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

Subchapter XII. Repealed Provisions; Transfers and Continuation.

§ 2-362.01. [Reserved].

§ 2-362.02. Transfers and continuation.

All rules, orders, obligations, determinations, grants, contracts, licenses, and agreements shall continue in effect according to their terms until lawfully amended, repealed, or modified.

(Apr. 8, 2011, D.C. Law 18-371, § 1202, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

§ 2-362.03. Applicability.

Sections 2-352.06, 2-358.03, and 2-361.01 shall apply upon the inclusion of their fiscal effect in an approved budget and financial plan.

(Apr. 8, 2011, D.C. Law 18-371, § 1203, 58 DCR 1185.)

Legislative history of Law 18-371. — For history of Law 18-371, see notes under § 2-351.01.

CHAPTER 3B. OTHER PROCUREMENT MATTERS.

Subchapter I. Procurement Related Claims

Sec.

2-381.01. Definitions.

2-381.02. False claims liability, treble damages, costs, and civil penalties; exceptions.

2-381.03. Investigations and prosecutions; powers of prosecuting authority; civil actions by individuals as qui tam plaintiffs; jurisdiction of courts.

2-381.04. Relief from retaliatory actions.

2-381.05. Limitation of actions; burden of proof.

2-381.06. Remedies pursuant to other laws; severability of provisions; liberality of article construction.

2-381.07. Civil investigative demands.

2-381.08. [Repealed].

2-381.09. Penalties for false representations.

Subchapter II. Electronic Commerce; Acquisition and Disposition

Sec.

2-381.21. Electronic transactions.

2-381.22. Electronic procurement.

2-381.23. Electronic auctions.

Subchapter III. Year 2000 District Government Computer Liability Immunity

2-381.31. Immunity for Year 2000 system failures.

2-381.32. Applicability.

Subchapter IV. Miscellaneous

2-381.41. New contracts with costs exceeding existing contracts.

2-381.42. Privatization of Fleet Management Services in the Metropolitan Police Department.

2-381.43. Standards for contracting officer.

Subchapter I. Procurement Related Claims.

§ 2-381.01. Definitions.

For the purposes of this subchapter, the term:

(1) "Claim" means any request or demand for money, property, or services made to any employee, officer, or agent of the District, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the District, or if the District will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(2) "Fixed obligation" means an amount due the District by contract or by law. The term "fixed obligation" does not include a fine to be imposed by law until the fine has been assessed.

(3)(A) "Knowing" or "knowingly" means that a person, with respect to information, does any of the following:

- (i) Has actual knowledge of the falsity of the information;
- (ii) Acts in deliberate ignorance of the truth or falsity of the information; or
- (iii) Acts in reckless disregard of the truth or falsity of the information.

(B) Proof of specific intent to defraud is not required for an act to be knowing.

(4) "Person" includes any natural person, corporation, firm, association, organization, partnership, business, or trust.

(5) "Proceeds" means civil penalties as well as double or treble damages as provided in § 2-381.02, and criminal fines pursuant to § 2-381.09.

(Feb. 21, 1996, D.C. Law 6-85, § 813, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g); Apr. 20, 1999, D.C. Law 12-264, § 10(a), 46 DCR 2118.)

Prior Codifications. — 2001 Ed., § 2-308.13.

1981 Ed., § 1-1188.13.

Emergency legislation. — For temporary addition of Subpart C 1981 Ed., see § 2(g) of the Procurement Reform Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-374, April 24, 1998, 45 DCR 4338).

Legislative history of Law 12-104. — For legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 2-301.05.

§ 2-381.02. False claims liability, treble damages, costs, and civil penalties; exceptions.

(a) Any person who commits any of the following acts shall be liable to the District for 3 times the amount of damages which the District sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the District for the costs of a civil action brought to recover penalties or damages, and may be liable to the District for a civil penalty of not less than \$5,000, and not more than \$10,000, for each false claim for which the person:

(1) Knowingly presents, or causes to be presented, to an officer or employee of the District a false claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false claim paid or approved by the District;

(3) Conspires to defraud the District by getting a false claim allowed or paid by the District;

(4) Has possession, custody, or control of public property or money used, or to be used, by the District and knowingly delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the District and knowingly makes or delivers a document that falsely represents the property used or to be used;

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;

(7) Knowingly makes or uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the District;

(8) Is a beneficiary of an inadvertent submission of a false claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the District; or

(9) Is the beneficiary of an inadvertent payment or overpayment by the District of monies not due and knowingly fails to repay the inadvertent payment or overpayment to the District.

(b) Notwithstanding subsection (a) of this section, the court may assess not more than two times the amount of damages which the District sustains because of the act of the person, and there shall be no civil penalty, if the court finds all of the following:

(1) The person committing the violation furnished officials of the District responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information;

(2) The person fully cooperated with any investigation by the District; and

(3) At the time the person furnished the District with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) Liability pursuant to this section shall be joint and several for any act committed by 2 or more persons.

(d) This section shall not apply to the following:

(1) Workers' compensation claims filed pursuant to Chapter 15 of Title 32;

(2) Unemployment compensation claims filed pursuant to Chapter 1 of Title 51; and

(3) Claims, records, or statements made pursuant to those portions of Title 47 of the District of Columbia Official Code that refer or relate to taxation.

(Feb. 21, 1986, D.C. Law 6-85, § 814, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687.)

Prior Codifications. — 2001 Ed., § 2-308.14. legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

1981 Ed., § 1-1188.14.

Legislative history of Law 12-104. — For

§ 2-381.03. Investigations and prosecutions; powers of prosecuting authority; civil actions by individuals as qui tam plaintiffs; jurisdiction of courts.

(a) The Corporation Counsel shall investigate, with such assistance from other District agencies as may be required, violations pursuant to § 2-381.02 involving District funds. If the Corporation Counsel finds that a person has violated or is violating the provisions of § 2-381.02, the Corporation Counsel may bring a civil action against that person in the Superior Court of the District of Columbia.

(b)(1) A person may bring a civil action for a violation of § 2-381.02 for the person and either for the District or in the name of the District. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action brought by the qui tam plaintiff may be dismissed only with the written consent of the court, taking into account the best interest of the parties involved and the public disclosure purposes of this subpart. The Corporation Counsel shall be served with the notice of proposed dismissal and shall have the opportunity to be heard.

(2) A complaint filed by a qui tam plaintiff pursuant to this subsection shall be filed in the Superior Court in camera and may remain under seal for up to 180 days, unless the seal is extended by the court. No service shall be made on the defendant until after the complaint is unsealed.

(3) On the same day as the complaint is filed pursuant to paragraph (2) of this subsection, the qui tam plaintiff shall serve the Corporation Counsel by mail, return receipt requested, with a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses.

(4) Within 180 days after receiving a complaint alleging violations involving District funds, the Corporation Counsel shall do either of the following:

(A) Notify the court that he or she intends to proceed with the action, in which case the seal may be lifted unless, for good cause shown, the court continues the seal; or

(B) Notify the court that he or she declines to take over the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(5) Upon a showing of good cause, the Corporation Counsel may move the court for extensions of the time during which the complaint remains under seal.

(6) When a qui tam plaintiff brings an action pursuant to this subsection, no other person may bring an action pursuant to this section based on the facts underlying the pending action.

(c)(1) No person may bring an action pursuant to subsection (b) of this section against a member of the Council of the District of Columbia ("Council"), a member of the District judiciary, or an elected official in the executive branch of the District, if the action is based on any official act occurring during his or her term of office.

(2)(A) No person may bring an action pursuant to subsection (b) of this section based upon allegations or transactions in a criminal, civil, or administrative proceeding, investigation, or report, or audit conducted by or at the request of the Council, the Auditor, the Inspector General, or other District or federal agency; or upon allegations or transactions disclosed by the news media, unless the person bringing the action is an original source of the information.

(B) For purposes of subparagraph (A) of this paragraph, the term "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based, who voluntarily provided the information to the District before filing an action based on that information, and whose information provided the basis or catalyst for the investigation, report, hearing, audit, or media disclosure which led to the public disclosure as described in subparagraph (A) of this paragraph.

(3) No person may bring an action pursuant to subsection (b) of this section based upon information learned by the person in the course of an internal investigation in preparation for, or in conjunction with, a voluntary disclosure to the District or federal government.

(4) No present or former employee of the District, or any person who is acting on behalf of or relying on information provided by that employee, may bring an action pursuant to subsection (b) of this section if the employee discovered or obtained the information on which the action is based during the course of his or her employment, unless that employee first in good faith

exhausted internal procedures for reporting and seeking recovery of such falsely claimed sums through official channels, including notice to the Corporation Counsel, and unless the District failed to act on the information provided within a reasonable time.

(5) No member or employee of the Council of the District of Columbia, the Corporation Counsel's Office, the Office of the Inspector General, the Office of the Auditor, the Office of the Chief Financial Officer, or the Metropolitan Police Department may bring an action pursuant to subsection (b) of this section based upon information discovered during the term of his or her employment.

(6) No person may bring an action pursuant to this section if the person has been convicted of a criminal offense in connection with any false claim that is the subject of the action.

(7) No person may sell or otherwise transfer any cause of action, or interest in any present or future benefit provided, pursuant to this section.

(d)(1) If the District proceeds with the action, it shall have the primary responsibility for prosecuting the action. The qui tam plaintiff shall have the right to continue as a party to the action and to participate in the action to the extent that the qui tam plaintiff is able to demonstrate to the court that such participation would neither be duplicative of nor interfere with the prosecution of the action by the Corporation Counsel; provided, that the qui tam action was proper pursuant to subsection (c) of this section.

(2)(A) The District may dismiss the action for good cause shown.

(B) The District may settle the action with the defendant, notwithstanding the objections of the qui tam plaintiff, if the court determines, after a hearing providing the qui tam plaintiff an opportunity to be heard, that the proposed settlement fairly, adequately, and reasonably protects the interests of the District under all of the circumstances.

(e)(1) If the District elects not to proceed and the qui tam action was proper pursuant to subsection (c) of this section, the qui tam plaintiff shall have the same right to conduct the action as the Corporation Counsel would have had if he or she had chosen to proceed pursuant to subsection (b) of this section. If the District so requests, the District shall be served with copies of all pleadings filed in the action.

(2) Upon timely application, the court shall permit the District to intervene in an action with which it had initially declined to proceed. In the event that the District is permitted to intervene, it shall have the primary responsibility for prosecuting the action as provided in subsection (d)(1) of this section.

(f)(1) If the District proceeds with an action brought by a qui tam plaintiff pursuant to subsection (b) of this section, and the qui tam action was proper pursuant to subsection (c) of this section, the qui tam plaintiff, subject to paragraphs (3) and (4) of this subsection, shall receive at least 10%, but not more than 25%, of the proceeds of the judgment or settlement of the claim, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the litigation, the qui tam plaintiff's attempts to avoid or resist such activity, and all other circumstances surrounding the activity, except, that if the qui tam plaintiff was substantially involved in the fraudulent

lent activity on which the action is based, the court may direct that the plaintiff receive less than 10%.

(2) If the District does not proceed with the action, the court may award the qui tam plaintiff those sums from the proceeds it considers appropriate, which shall be at least 25% but not more than 40%, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, and the scope of, and response to, the employee's attempts to report and gain recovery of such falsely claimed funds through official channels; provided, that if the qui tam plaintiff was substantially involved in the fraudulent activity on which the action is based, the court may award the qui tam plaintiff less than 25%.

(3) The portion of the recovery not distributed pursuant to paragraphs (1) and (2) of this subsection shall be paid to the District treasury.

(4) If the District or the qui tam plaintiff prevails in or settles any action pursuant to subsection (c) of this section, the qui tam plaintiff shall receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable costs and attorneys fees. All expenses, costs, and fees shall be awarded against the defendant and under no circumstances shall they be the responsibility of the District.

(5) If the District does not proceed with the action and the qui tam plaintiff conducts the action, the court may award to the defendant reasonable attorneys fees and expenses necessarily incurred if the defendant prevails in the action and the court finds that the claim of the qui tam plaintiff was frivolous, vexatious, or brought solely for purposes of harassment.

(g) In any action brought pursuant to this section, the court may stay discovery if the Corporation Counsel or the United States Attorney's Office shows that discovery would interfere with an investigation or a prosecution of a criminal matter arising out of the same facts, regardless of whether the Corporation Counsel or the United States Attorney's Office has pursued the criminal or civil investigation or proceedings with reasonable diligence, and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(Feb. 21, 1986, D.C. Law 6-85, § 815, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 10(b), 46 DCR 2118; Mar. 11, 2010, D.C. Law 18-117, § 4, 57 DCR 896; Sept. 14, 2011, D.C. Law 19-21, § 9004(a), 58)

Prior Codifications. — 2001 Ed., § 2-308.15.

1981 Ed., § 1-1188.15.

Effect of amendments. — D.C. Law 18-117, in subsec. (f)(1), substituted "but not more than 25%" for "but not more than 20%".

D.C. Law 19-21, in subsec. (f)(1), deleted the second sentence, which read as follows: "When the Corporation Counsel conducts the action, 25% of the proceeds of the judgment or settle-

ment of the claim shall be paid into the Anti-fraud Fund established by § 2-381.08."

Legislative history of Law 12-104. — For legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 2-301.05.

Legislative history of Law 18-117. — For history of Law 19-21, see notes under § 2-351.15.
Law 18-117, see notes following § 2-223.01.

Legislative history of Law 19-21. — For

§ 2-381.04. Relief from retaliatory actions.

(a) No employer, including the District of Columbia, shall make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency concerning, or from acting in furtherance of, a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed pursuant to § 2-381.03.

(b) No employer, including the District of Columbia, shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency relating to, or in furtherance of, a false claims action, including investigation of, initiation of, or testimony or assistance in, an action filed or to be filed pursuant to § 2-381.03.

(c) Any employer, including the District of Columbia, who violates subsection (b) of this section shall be liable for the relief necessary to make the employee whole, including reinstatement with the same seniority status that the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate (except in the case of the District), punitive damages. In addition, the defendant shall be required to pay litigation costs and reasonable attorneys fees, necessarily incurred. An employee may bring an action in the Superior Court for the relief provided in this subsection.

(d) An employee who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in the terms and conditions of employment by his or her employer, including the District of Columbia, because of participation in conduct which directly or indirectly results in submission of a false claim being submitted to the District shall be entitled to the remedies pursuant to subsection (c) of this section, only if the following is true:

(1) The employee voluntarily disclosed all relevant information to a government or law enforcement agency; and

(2) The employee had been harassed, threatened with termination or demotion, or otherwise coerced by the employer or its management into engaging in the activity giving rise to the false claim.

(Feb. 21, 1986, D.C. Law 6-85, § 816, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 10(c), 46DCR 2118.)

Prior Codifications. — 2001 Ed., § 2-308.16.

1981 Ed., § 1-1188.16.

Legislative history of Law 12-104. — For

legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

Legislative history of Law 12-264. — For

legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 2-301.05.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Questions for jury.
Summary judgment.
Transcripts.
Witness fees.

Admissibility of evidence.

Forensic psychiatrist's testimony as to training of former employee's wife as medical records specialist, but that she worked at home as housewife rather than in her profession and took active role in employee's medical treatment, was within psychiatrist's area of expertise and admissible in employee's retaliation suit, under False Claims Act (FCA) and District of Columbia law, claiming that he was terminated for complaining of discrimination based on race, color, gender, Syrian national origin, and Muslim religion, since testimony was all part of standard family history that any competent psychiatrist would gather in performing psychiatric assessment, and any cultural biases would be aired in cross-examination. *Kakeh v. United Planning Org., Inc.*, 587 F.Supp.2d 125, 2008 U.S. Dist. LEXIS 94261 (2008).

Forensic psychiatrist's testimony to former employee's untruthfulness during examination was admissible, in employee's retaliation suit, under False Claims Act (FCA) and District of Columbia law, claiming that he was terminated for complaining of discrimination based on race, color, gender, Syrian national origin, and Muslim religion, since expert relied, with great specificity, on contradictions between what employee told expert and facts contained in voluminous medical records that expert studied. *Kakeh v. United Planning Org., Inc.*, 587 F.Supp.2d 125, 2008 U.S. Dist. LEXIS 94261 (2008).

Forensic psychiatrist's testimony to former employee's personnel file at prior place of employment was not relevant to rebut employee's claim for emotional distress, precluding admission of testimony in employee's retaliation suit, under False Claims Act (FCA) and District of Columbia law, claiming that he was terminated for complaining of discrimination based on race, color, gender, Syrian national origin, and Muslim religion, and seeking damages for emotional distress due to termination. *Kakeh v. United Planning Org., Inc.*, 587 F.Supp.2d 125, 2008 U.S. Dist. LEXIS 94261 (2008).

Forensic psychiatrist's purely speculative and highly inflammatory testimony about for-

mer employee's alleged extra-marital activities was inadmissible, in employee's retaliation suit, under False Claims Act (FCA) and District of Columbia law, claiming that he was terminated for complaining of discrimination based on race, color, gender, Syrian national origin, and Muslim religion. *Kakeh v. United Planning Org., Inc.*, 587 F.Supp.2d 125, 2008 U.S. Dist. LEXIS 94261 (2008).

Evidence of former employee's work for non-profit organization funded by Libyan government and alleged work for Saudi royal family was relevant to employee's Muslim religion and Syrian national origin, as required for admission in employee's retaliation suit, under False Claims Act (FCA) and District of Columbia law, claiming that he was terminated for complaining of discrimination based on race, color, gender, national origin, and religion, since employee's religion and ethnicity were integral elements of his discrimination case. *Kakeh v. United Planning Org., Inc.*, 587 F.Supp.2d 125, 2008 U.S. Dist. LEXIS 94261 (2008).

Evidence of former employee's previous job performance and termination at prior company, on grounds that his management style was not conducive to building strong management team, was not relevant to employee's alleged failure to mitigate his damages sought from more recent employer, precluding admission of evidence regarding prior termination in employee's retaliation suit, under False Claims Act (FCA) and District of Columbia law, claiming that he was terminated by more recent employer for complaining of discrimination based on race, color, gender, Syrian national origin, and Muslim religion. *Kakeh v. United Planning Org., Inc.*, 587 F.Supp.2d 125, 2008 U.S. Dist. LEXIS 94261 (2008).

Probative value of testimony by former employee's daughter, concerning employee's arrest and detention for misdemeanor child abuse, due to striking daughter with bat and shaving her head for absences from school and home and not wearing traditional Muslim head covering, outweighed danger of unfair prejudice against employee, who was Muslim, regarding his relationships with women, as required for admission of testimony in employee's retaliation suit, under False Claims Act (FCA) and District of Columbia law, claiming that he was terminated for complaining of discrimination based on race, color, gender, Syrian national origin, and religion, and seeking damages for emotional distress, since family

difficulties were relevant to his emotional distress during unemployment. *Kakeh v. United Planning Org., Inc.*, 587 F.Supp.2d 125, 2008 U.S. Dist. LEXIS 94261 (2008).

Questions for jury.

In terminated employee's suit under District of Columbia Whistleblower Protection Act (WPA), federal False Claims Act (FCA) and District of Columbia False Claims Act (DCFCA), jury in rendering special verdict intended to provide employee with only one award of back pay and one award of compensatory damages, rather than three separate awards for each, and judgment would be amended to reflect that intent. *Kakeh v. United Planning Org., Inc.*, 655 F.Supp.2d 107, 2009 U.S. Dist. LEXIS 81964 (2009).

Issue of whether controller's former employer, a private nonprofit corporation that received funding from federal and District of Columbia governments, violated District of Columbia Whistleblower Protection Act (WPA) and retaliated against him under federal False Claims Act (FCA) and District of Columbia False Claims Act (DCFCA) when it terminated his employment one day after visit from Office of Inspector General (OIG) and after he disclosed to supervisor that he believed he was being asked to violate billing and accountability practices of Community Service Block Grant (CSBG) program was for jury in his whistleblowing case. *Kakeh v. United Planning Org., Inc.*, 655 F.Supp.2d 107, 2009 U.S. Dist. LEXIS 81964 (2009).

Summary judgment.

District of Columbia attorney's allegations that he reported improprieties in the contract process and that he was then terminated were insufficient to plead attorney engaged in a protected activity, as required to state a retaliation claim under the District of Columbia False Claims Act, absent allegations that he

reported or investigated anyone who made a false claim for payment. *Payne v. District of Columbia*, 773 F.Supp.2d 89, 2011 U.S. Dist. LEXIS 32977 (2011).

Genuine issue of material fact existed as to whether former employer was aware of any protected disclosures by former employee, precluding summary judgment for employer on employee's claims for violations of the District of Columbia Whistleblower Protection Act (WPA), and anti-retaliation provisions of the False Claims Act (FCA) and the District of Columbia False Claims Act. *Kakeh v. United Planning Org.*, 537 F.Supp.2d 65, 2008 U.S. Dist. LEXIS 14917 (2008).

Transcripts.

Former employee of private nonprofit corporation that received funding from federal and District of Columbia governments was not entitled to recover costs of transcripts for depositions noticed by defendants as part of his costs in whistleblower action against employer alleging violations of False Claims Act (FCA), District of Columbia False Claims Act, and District of Columbia Whistleblower Protection Act (WPA), since transcripts were not used on record at any hearing or at trial. *Kakeh v. United Planning Org.*, 657 F.Supp.2d 15, 2009 U.S. Dist. LEXIS 87874 (2009).

Witness fees.

Former employee of private nonprofit corporation that received funding from federal and District of Columbia governments was not entitled to recover expert witness fees as part of his costs in whistleblower action against employer alleging violations of False Claims Act (FCA), District of Columbia False Claims Act, and District of Columbia Whistleblower Protection Act (WPA), absent explicit authorization to recover fees in statutes. *Kakeh v. United Planning Org.*, 657 F.Supp.2d 15, 2009 U.S. Dist. LEXIS 87874 (2009).

§ 2-381.05. Limitation of actions; burden of proof.

(a) A civil action brought pursuant to § 2-381.03 may not be filed more than 6 years after the date on which the violation of § 2-381.02 is committed or more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by an official of the Office of Corporation Counsel, but in no event more than 9 years after the date on which the violation is committed, whichever occurs last.

(b) A civil action brought pursuant to § 2-381.03 may not be brought for activity prior to April 12, 1997.

(c) In any action brought pursuant to § 2-381.03, the District or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, a judgment of guilt in a

criminal proceeding charging false statements or fraud, upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action brought pursuant to § 2-308.15 which involves the same transaction as in the criminal proceeding.

(Feb. 21, 1986, D.C. Law 6-85, § 817, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 10(d), 46 DCR 2118.)

Prior Codifications. — 2001 Ed., § 2-308.17.

1981 Ed., § 1-1188.17.

Legislative history of Law 12-104. — For legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 2-301.05.

§ 2-381.06. Remedies pursuant to other laws; severability of provisions; liberality of article construction.

The provisions of this chapter are not exclusive, and the remedies provided for shall be in addition to any other remedies provided for in any other law or available pursuant to common law.

(Feb. 21, 1986, D.C. Law 6-85, § 818, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687.)

Prior Codifications. — 2001 Ed., § 2-308.18.

1981 Ed., § 1-1188.18.

Legislative history of Law 12-104. — For

legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

CASE NOTES

In general.

District of Columbia seeking a preliminary injunction against arbitration of dispute arising out of government contract was substantially likely to prevail on the merits of its claim that it was not bound by the ultra vires act of a contracting officer purporting to agree to arbitration. *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

A preliminary injunction against arbitration of dispute arising out of government contract was supported by irreparable harm to the District of Columbia in the form of the unnecessary and additional expense of arbitration, delay of the inevitable proceeding before the Contract Appeals Board (CAB), and the use of a closed conference room to resolve a dispute over a

public contract. *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

Balance of harms favored preliminary injunction against arbitration of dispute arising out of government contract; the only harm to the contractor was delay in the event the arbitration clause was enforceable, and the harm to the District of Columbia was the unnecessary and additional expense of arbitration, delay of the inevitable proceeding before the Contract Appeals Board (CAB), and the use of a closed conference room to resolve a dispute over a public contract. *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

§ 2-381.07. Civil investigative demands.

(a)(1) Whenever the Corporation Counsel has reason to believe that any

person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Corporation Counsel may, in order to determine whether to commence a civil proceeding pursuant to this chapter, issue in writing and cause to be served upon such person a civil investigative demand requiring that such person do the following:

(A) Produce documentary material relevant to the false claims law investigation for inspection and copying;

(B) Answer in writing written interrogatories with respect to any documentary material or information relevant to the false claims law investigation;

(C) Provide oral testimony concerning any documentary material or information relevant to the false claims law investigation; or

(D) Furnish any combination of such material, answers, or testimony.

(2) The Corporation Counsel may delegate to the Principal Deputy Corporation Counsel the authority, in his or her absence, to issue civil investigative demands pursuant to paragraph (1) of this subsection. The Corporation Counsel may not issue a civil investigative demand in order to conduct, or assist in the conducting of, a criminal investigation.

(b)(1) Each civil investigative demand issued pursuant to subsection (a)(1) of this section shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to have been violated.

(2) If such demand is for the production of documentary material, the demand shall do the following:

(A) Describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

(B) Prescribe a return date for each such class that will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

(C) Identify the false claims law investigator to whom such material shall be made available.

(3) If such demand is for answers to written interrogatories, the demand shall do the following:

(A) Set forth with specificity the written interrogatories to be answered;

(B) Prescribe dates at which time answers to written interrogatories shall be submitted; and

(C) Identify the false claims law investigator to whom such answers shall be submitted.

(4) If such demand is for the giving of oral testimony, the demand shall do the following:

(A) Prescribe the date, time, and place at which oral testimony shall commence;

(B) Identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

(C) Specify that such attendance and testimony are necessary to conduct the investigation;

(D) Notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(E) Describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(5) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand shall be a date that is not less than 7 days after the date on which the demand is received, unless the Corporation Counsel determines that exceptional circumstances are present that warrant the commencement of such testimony within a shorter period of time.

(6) The Corporation Counsel shall not authorize, pursuant to subsection (a)(1) of this section, issuance of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Corporation Counsel, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(c) A civil investigative demand may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:

(1) The standards applicable to subpoenas or subpoenas duces tecum issued by a court of the District of Columbia to aid in a grand jury investigation; or

(2) The standards applicable to discovery requests pursuant to the Superior Court Civil Rules to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

(d)(1) Any civil investigative demand issued pursuant to subsection (a) of this section may be served by a false claims law investigator or his or her agent, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States; provided, that the Superior Court of the District of Columbia could exercise jurisdiction over the recipient of the demand consistent with the due process clause of the Constitution of the United States.

(2) Any such demand or any petition filed pursuant to subsection (a) of this section may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Superior Court Civil Rules prescribe for service in a foreign country; provided, that the Superior Court of the District of Columbia could exercise jurisdiction over the recipient of the demand consistent with the due process clause of the Constitution of the United States.

(e)(1) Service of any civil investigative demand issued pursuant to subsection (a) of this section, or of any petition filed pursuant to subsection (a) of this section, may be made upon a partnership, corporation, association, or other legal entity by the following methods:

(A) Delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership,

corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) Delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) Depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(2) Service of any such demand or petition may be made upon any natural person by the following methods:

(A) Delivering an executed copy of such demand or petition to the person; or

(B) Depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(f) A verified return by the individual serving any civil investigative demand or any petition filed pursuant to subsection (a) of this section setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(g)(1) The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the following:

(A) In the case of a natural person, by the person to whom the demand is directed; or

(B) In the case of a person other than a natural person, by a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

(2) The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

(3) Any person upon whom any civil investigative demand for the production of documentary material has been served shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct pursuant to subsection (j)(1) of this section. Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

(h)(1) Each interrogatory in a civil investigative demand shall be answered

separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, as follows:

(A) In the case of a natural person, by the person to whom the demand is directed, or

(B) In the case of a person other than a natural person, by the person or persons responsible for answering each interrogatory.

(2) If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(i)(1) The examination of any person, pursuant to a civil investigative demand for oral testimony, shall be conducted before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is taken shall put the witness under oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken by any means authorized by, and in a manner consistent with, the Superior Court Civil Rules, and shall be transcribed.

(2) The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney or other representative of the person giving the testimony, the attorney for the District government, any person who may be agreed upon by the attorney for the District government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

(4) When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by an attorney, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance that the witness desires shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

(5) The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness. The officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(6) Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Corporation Counsel may, for good cause, limit such witness to inspection of the official transcript of the witness's testimony.

(7) Any person compelled to appear for oral testimony pursuant to a civil investigative demand may be accompanied, represented, and advised by an attorney. The attorney may advise such person, in confidence, with respect to any question asked of such person. Such person or attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record only when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not, directly or through the person's attorney, otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the Superior Court of the District of Columbia pursuant to subsection (d)(1) of this section for an order compelling such person to answer the question.

(8) Any person appearing for oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and allowances that are paid to witnesses in the Superior Court of the District of Columbia.

(j)(1) The Corporation Counsel shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received pursuant to this section, and shall designate such additional false claims law investigators as the Corporation Counsel determines from time to time to be necessary to serve as deputies to the custodian.

(2)(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony pursuant to this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material pursuant to paragraph (4) of this subsection.

(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or any other officer or employee of the Office of the Corporation Counsel who is authorized for such use by the Corporation Counsel. Such material, answers, and transcripts may be used by any authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony pursuant to this section.

(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies

thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or officer or employee of the Office of the Corporation Counsel authorized pursuant to subparagraph (B) of this paragraph. The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts. Nothing in this subparagraph is intended to prevent disclosure to the District of Columbia Council, including any committee of the Council, to the United States Attorney's Office, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any agency other than the Council or the United States Attorney's Office shall be allowed only upon application, made by the Corporation Counsel to the Superior Court of the District of Columbia, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities and after giving the individuals who provided the information an opportunity to be heard on the release of the information.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Corporation Counsel shall prescribe, the following shall apply:

(i) Documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

(ii) Transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

(3) Whenever any attorney of the Office of the Corporation Counsel is conducting any official investigation or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received pursuant to this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such investigation or proceeding as such attorney determines to be required. Upon the completion of any such investigation or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered that have not passed into the control of any court or agency through introduction into the record of any case or proceeding.

(4) If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand, and any case or proceeding before a court arising out of such investigation, or any proceeding before any District government agency involving such material, has been completed, or no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false

claims law investigator pursuant to subsection (g)(2) of this section or made for the Office of the Corporation Counsel pursuant to paragraph (2)(B) of this subsection), which has not passed into the control of any court or agency through introduction into the record of such case or proceeding.

(5)(A) In the event of the death, disability, or separation from service in the Office of the Corporation Counsel of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand issued pursuant to this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Corporation Counsel shall promptly do the following:

(i) Designate another false claims law investigator to serve as custodian of such material, answers, or transcripts; and

(ii) Transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

(B) Any person who is designated to be a successor pursuant to this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction that occurred before that designation.

(k)(1) Whenever any person fails to comply with any civil investigative demand, or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Corporation Counsel may file in the Superior Court of the District of Columbia and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

(2)(A) Any person who receives a civil investigative demand may file in the Superior Court of the District of Columbia and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. Any petition issued pursuant to this subparagraph must be filed:

(i) Within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier; or

(ii) Within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief pursuant to subparagraph (A) of this paragraph, and may be based upon any failure of the demand, or any particular portion thereof, to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(3) At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of

oral testimony given, by any person in compliance with any civil investigative demand, such person may file in the Superior Court of the District of Columbia and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

(4) Whenever any petition is filed in the Superior Court of the District of Columbia, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal. Any disobedience of any final order entered pursuant to this section by any court shall be punished as contempt of court.

(5) The Superior Court Civil Rules shall apply to any petition issued pursuant to this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

(l) Any documentary material, answers to written interrogatories, or oral testimony provided pursuant to any civil investigative demand issued pursuant to subsection (a) of this section shall be exempt from disclosure pursuant to subchapter II of Chapter 5 of this title.

(m) For purposes of this section, the term:

(1) "Custodian" means the custodian, or any deputy custodian, designated by the Corporation Counsel pursuant to subsection (j)(1) of this section.

(2) "Documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery.

(3) "False claims law" means § 2-301.03 and this subchapter [§ 2-381.01 through 2-381.09].

(4) "False claims law investigation" means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

(5) "False claims law investigator" means any attorney or investigator employed by the Office of the Corporation Counsel who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the District government acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

(6) "Person" means any natural person, partnership, corporation, association, or other legal entity, including any state or political subdivision of a state.

(Feb. 21, 1986, D.C. Act 6-85, § 819, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, § 10(e), 46 DCR 2118; Apr. 12, 2000, D.C. Law 13-91, § 122, 47 DCR 520.)

Prior Codifications. — 2001 Ed., § 2-308.19.

1981 Ed., § 1-1188.19.

Effect of amendments. — D.C. Law 13-91,

in par. (4) of subsec. (j), substituted “subsection (g)(2)” for “subsection (e)(2)” and “paragraph (2)(B) of this subsection,” for “paragraph (2)(B) of this subsection.”

Legislative history of Law 12-104. — For legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 2-301.05.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 2-201.01.

§ 2-381.08. Antifraud fund. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-85, § 820, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Sept. 14, 2011, D.C. Law 19-21, §§ 1062, 9004(b), 58 DCR 6226.)

Prior Codifications. — 2001 Ed., § 2-308.20.

1981 Ed., § 1-1188.20.

Legislative history of Law 12-104. — For legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 2-351.15.

Short title. — Short title: Section 1061 of D.C. Law 19-21 provided that subtitle F of title I of the act may be cited as “OIG Auditing Reform Amendment Act of 2011”.

§ 2-381.09. Penalties for false representations.

Whoever makes or presents to any officer or employee of the District of Columbia government, or to any department or agency thereof, any claim upon or against the District of Columbia, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than one year and assessed a fine of not more than \$100,000 for each violation of this chapter. The Corporation Counsel shall prosecute violations of this section.

(Feb. 21, 1986, D.C. Law 6-85, § 821, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687.)

Prior Codifications. — 2001 Ed., § 2-308.21.

1981 Ed., § 1-1188.21.

Legislative history of Law 12-104. — For

legislative history of D.C. Law 12-104, see Historical and Statutory Notes following § 2-308.07.

CASE NOTES

Prosecutorial authority.

District of Columbia Council did not have authority, under provision in Congressional statute dividing prosecutorial authority that assigned prosecutions for violations of police or municipal ordinances when the maximum punishment was a fine only or imprisonment not exceeding one year to the Office of the Attorney General for the District of Columbia (OAG), to assign prosecutions for violation of the false claims statute passed by Council to the OAG

rather than the United States Attorney’s Office for the District of Columbia (USAO), as the false claims statute authorized a punishment of fine and imprisonment, and the penalty of up to \$100,000 per violation and up to one year in jail per violation was not a punishment in the nature of one that flowed from a violation of something akin to a police or municipal ordinance. In re Prosecution of Crawley, 978 A.2d 608, 2009 D.C. App. LEXIS 354 (2009).

Subchapter II. Electronic Commerce; Acquisition and Disposition.

§ 2-381.21. Electronic transactions.

(a) Notwithstanding any other provisions of this chapter, the CPO may acquire supplies and services through:

- (1) Electronic solicitation and bid response; or
- (2) Electronic auctions.

(b) In selecting one of the methods authorized by this section, upon proper validation and authorization, a contracting officer may accept electronic signatures for all electronic commerce transactions.

(Feb. 21, 1986, D.C. Law 6-85, § 1201, as added Oct. 22, 2009, D.C. Law 18-64, § 2(f), 56 DCR 6603.)

Prior Codifications. — 2001 Ed., § 2-312.01.

Legislative history of Law 18-64. — Law 18-64, the “Procurement Practices Amendment Act of 2009”, as introduced in Council and assigned Bill No. 18-7, which was referred to the Committee on Government Operations and

the Environment. The Bill was adopted on first and second readings on June 30, 2009, and July 14, 2009, respectively. Signed by the Mayor on July 28, 2009, it was assigned Act No. 18-160 and transmitted to both Houses of Congress for its review. D.C. Law 18-64 became effective on October 22, 2009.

§ 2-381.22. Electronic procurement.

(a) The CPO may issue a solicitation by any electronic medium, including the Internet, electronic mail, or disk medium.

(b) The CPO may accept responses to solicitations by any electronic medium, including the Internet, electronic mail, or disk medium.

(Feb. 21, 1986, D.C. Law 6-85, § 1202, as added Oct. 22, 2009, D.C. Law 18-64, § 2(f), 56 DCR 6603.)

Prior Codifications. — 2001 Ed., § 2-312.02.

Legislative history of Law 18-64. — For Law 18-64, see notes following § 2-312.01.

§ 2-381.23. Electronic auctions.

(a) The CPO may procure commercial products or commercial services through Reverse Auctions.

(b) The CPO may place any requirement for a commercial product or commercial service on an established online Reverse Auction exchange that would allow any bidder to competitively bid down the price of that commercial product or commercial service over a stated period of time established by the CPO.

(c) The CPO may establish an online auction exchange for the purposes of executing Reverse Auction transactions on behalf of the District.

(d) The CPO may establish an online standard auction exchange for the purpose of executing standard auction transactions on behalf of the District government.

(Feb. 21, 1986, D.C. Law 6-85, § 1203, as added Oct. 22, 2009, D.C. Law 18-64, § 2(f), 56 DCR 6603.)

Prior Codifications. — 2001 Ed., § 2-312.03.

Legislative history of Law 18-64. — For Law 18-64, see notes following § 2-312.01.

Subchapter III. Year 2000 District Government Computer Liability Immunity.

§ 2-381.31. Immunity for Year 2000 system failures.

(a) Notwithstanding § 2-308.01, no cause of action at law or in equity, nor any administrative action shall be maintained against the District government or its officers or employees, arising from a Year 2000 system failure.

(b) No cause of action at law or in equity, nor any administrative action shall be maintained against a District government vendor, arising from a Year 2000 system failure caused primarily by the vendor's use of computer hardware, software, or equipment that is not Year 2000 complaint and which is owned or provided by the District government, unless the action is maintained by the District government.

(c) All District government contracts executed after April 20, 1999 shall include a warranty of Year 2000 compliance for any goods or services provided pursuant to the contract, and shall state that the vendor is liable for any damages if the goods and services are not Year 2000 compliant.

(d) For the purposes of this subchapter:

(1) The term "Year 2000 compliance or compliant" means the capability of a computer software program, database, network, information system, computer device, or any equipment using microchips, to interpret, produce, generate, calculate, or to correctly account for a date in the year 2000 or in subsequent years.

(2) The term "Year 2000 system failure" means the failure of a computer software program, database, network, information system, computer device, or any equipment using microchips, to interpret, produce, generate, calculate, or to correctly account for a date in the year 2000 or in subsequent years.

(Apr. 20, 1999, D.C. Law 12-244, § 2, 46 DCR 1080.)

Prior Codifications. — 2001 Ed., § 2-323.01.
1981 Ed., § 1-1188.51.

Legislative history of Law 12-244. — Law 12-244, the "Year 2000 Government Computer Immunity Act of 1998," was introduced in Council and assigned Bill No. 12-732, which was referred to the Committee on Government

Operations. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 24, 1998, it was assigned Act No. 12-581 and transmitted to both Houses of Congress for its review. D.C. Law 12-244 became effective on April 20, 1999.

§ 2-381.32. Applicability.

This subchapter shall apply to claims arising between April 20, 1999 and

December 31, 2005, and to contracts executed and in effect between April 20, 1999 and December 31, 2005.

(Apr. 20, 1999, D.C. Law 12-244, § 3, 46 DCR 1080.)

Prior Codifications. — 2001 Ed., § 2-323.02.

1981 Ed., § 1-1188.52.

Legislative history of Law 12-244. — For

legislative history of D.C. Law 12-244, see Historical and Statutory Notes following § 2-323.01.

Subchapter IV. Miscellaneous.

§ 2-381.41. New contracts with costs exceeding existing contracts.

The Mayor shall not enter into any new contract for goods or services the cost of which exceeds the cost of an existing contract for the same goods or services, when the current contractor is willing to continue to provide the goods or services at the price of the existing contract, as long as the contractor is providing satisfactory service; nor shall the Mayor extend any existing contract for any amount over the price agreed to in the existing contract. Nothing contained in this section shall prohibit the Mayor from putting a contract out for bid for a lower price.

(Sept. 26, 1995, D.C. Law 11-52, § 816, 42 DCR 3684.)

Prior Codifications. — 2001 Ed., § 2-325.01.

1981 Ed., § 1-1181.6a.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4 of the Budget Implementation Temporary Act of 1995 (D.C. Law 11-18, May 27, 1995, law notification 42 DCR 2845).

For temporary (225 day) amendment of section, see §§ 2 through 5 of the Oak Hill Youth Center Educational Contracting Temporary Act of 1996 (D.C. Law 11-193, April 9, 1997, law notification 44 DCR 2388).

Legislative history of Law 11-52. — Law 11-52, the “Omnibus Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

§ 2-381.42. Privatization of Fleet Management Services in the Metropolitan Police Department.

(a) Notwithstanding any provision of § 2-352.05, the Mayor, in accordance with the provisions of this subchapter, is authorized to contract for the provision of services for the fleet management services for the Metropolitan Police Department.

(b) Prior to the award of the fleet management services contract referred to in subsection (a) of this section, the Mayor shall make a written determination and findings which will address the following factors:

(1) Over the duration of the contract, including any options, the District will either realize a projected cost savings or receive the services of an improved quality or quantity at the same or lower cost;

(2) There may be increased economic development in the District in terms of entrepreneurial opportunities for District businesses or employment opportunities for District residents;

(3) There may be strengthening of any existing District businesses or the creation of any new businesses in the District, or relocation of any businesses from outside to inside the District;

(4) The District can describe with reasonable precision its minimum acceptable performance standards;

(5) That cost, efficiency of operation, and quality and quantity can be measured with reasonable accuracy; and

(6) That contracting-out of the program will not adversely affect the delivery of services to District residents.

(c) The Mayor shall base the conclusion required by subsection (b)(1) of this section on a written cost/benefit analysis prepared by the Metropolitan Police Department. At a minimum, this analysis shall include one of the following comparisons:

(1) Over the duration of the contract, including options, the projected current total cost to the District government of performing the services in-house versus the projected total cost to the District government after the contracting-out, if quality and quantity of service remain substantially the same; or

(2) Over the duration of the contract, including options, the projected quality and quantity versus projected quality and quantity of service after the contracting-out, if total cost to the District government of services performed in-house remains substantially the same.

(d) The Mayor may issue rules which set forth standards for making the written cost/benefit analysis described in subsection (c) of this section, including rules that address the following:

(1) Cost factors to be considered in evaluating the total cost to the District government of operating the program if the service continues to be provided by the government, such as the cost of equipment, facilities, maintenance, personnel, and utilities;

(2) The cost factors to be considered in evaluating the total cost to the District government of contracting-out the program, such as the additional cost of improving any capital assets to be transferred to a contractor, the additional cost of any one-time severance of District employees, the additional cost of contract administration, the value of any improvement to District government programs resulting from privatizing the program, any income to the District government from the lease or sale of District government assets resulting from contracting-out the program, and any tax revenue to the District based on income earned by a contractor who performs the fleet management operations; and

(3) Methods to be used to identify and measure the quality and quantity of services so that accurate cost comparisons can be made between District government and private sector performance.

(e) A contract for privatizing the fleet management services referred to in subsection (a) of this section shall include a provision requiring that at least

51% of all new hires to perform the contract are bona fide District residents unless the Mayor certifies that qualified District residents are unavailable to fill the new positions.

(f) If not already required by a collective bargaining agreement, the Mayor shall make reasonable efforts to consult with union representatives concerning affected District government employees.

(g) Nothing in this section may be construed to create a private right enforceable by any person.

(Sept. 26, 1995, D.C. Law 11-52, § 701, 42 DCR 3684.)

Prior Codifications. — 2001 Ed., § 2-325.02.

1981 Ed., § 1-1191.3.

Legislative history of Law 11-52. — Law 11-52, the “Omnibus Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-218, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

§ 2-381.43. Standards for contracting officer.

(a) Any contracting manager or contracting officer who performs the cost/benefit analysis required by § 2-301.05b(a)(1) shall meet certain training standards and be certified to ensure a level of management skills and experience in doing cost/benefit analyses.

(b) Within 60 days of August 14, 1995, the Mayor shall issue, as a part of the District Government Procurement Regulations, rules for all District government employees who participate in the preparation of any cost/benefit analysis for any proposal to contract out services previously provided by District employees. The rules shall include the provisions contained in subsection (a) of this section.

(Feb. 21, 1986, D.C. Law 6-85, § 1102a, as added Mar. 5, 1996, D.C. Law 11-98, § 501(c), 43 DCR 5; Apr. 8, 2011, D.C. Law 18-371, § 1201(a), 58 DCR 1185.)

Prior Codifications. — 2001 Ed., § 2-325.03.

1981 Ed., § 1-1191.4.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 701(c) of the Budget Support Temporary

Act of 1995 (D.C. Law 11-78, January 26, 1996, law notification 43 DCR 650).

Legislative history of Law 11-98. — For legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 2-301.05c.

CHAPTER 4. CLAIMS AGAINST DISTRICT.

Subchapter I. General Provisions

- Sec.
 2-401. Service of process.
 2-402. Settlement of claims and suits against District.
 2-403. Refund where assessments held void.
 2-404. Report to Congress; appropriations.
 2-405. Effective date.
 2-406. Compromise of claim or suit.
 2-407. [Repealed].

Subchapter II. Non-Liability of District Employees

- 2-411. Definitions.
 2-412. Governmental immunity for negligent operation of vehicles by District employees.
 2-413. Action against employee barred by judgment against District; notice of claim; administrative disposition of claim as evidence.

Sec.

- 2-414. Excessive verdicts.
 2-415. Actions against District employees for negligent operation of vehicles barred; indemnification of medical employees; disciplinary actions.
 2-416. Liability of employee to District for negligent damage to its property.

Subchapter III. Unjust Imprisonment

- 2-421. Right to present claim.
 2-422. Proof required.
 2-423. Damages.
 2-424. Application of subchapter — Date of release.
 2-425. Same — Entry of guilty plea.

Subchapter IV. Risk Management

- 2-431. Report by the Office of the City Administrator to the Council on risk management activities.

Subchapter I. General Provisions.

§ 2-401. Service of process.

In suits commenced after June 20, 1874, against the District of Columbia, process may be served on the Mayor of the District of Columbia, until otherwise provided by law.

(June 20, 1874, 18 Stat. 117, ch. 337, § 2.)

Cross references. — Actions against District for unliquidated damages, notice, time limitations, see § 12-309.

Prior Codifications. — 1981 Ed., § 1-1201.
 1973 Ed., § 1-901.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Failure to serve counsel.
 Failure to serve mayor.
 In general.

Failure to serve counsel.

In order to effect proper service upon the

District of Columbia, a plaintiff must serve the mayor and corporation counsel. *Murray v. District of Columbia*, 870 A.2d 25, 2005 D.C. App. LEXIS 56 (2005).

Slip-and-fall plaintiff did not meet her initial burden of offering some explanation for her failure to serve Corporation Counsel with com-

plaint against district, and thus trial court could not permit plaintiff to reinstate her complaint after its dismissal for improper service. *Dorsey v. District of Columbia*, 839 A.2d 667, 2003 D.C. App. LEXIS 753 (2003).

Filing, by slip-and-fall plaintiff, of proof of service upon district did not relieve plaintiff of obligation to provide proof of service upon Corporation Counsel, for purposes of determining whether plaintiff's case was subject to dismissal for failure to serve Corporation Counsel. *Dorsey v. District of Columbia*, 839 A.2d 667, 2003 D.C. App. LEXIS 753 (2003).

Slip-and-fall plaintiff's suit against district was subject to dismissal for failure to serve Corporation Counsel, where plaintiff only served mayor. *Dorsey v. District of Columbia*, 839 A.2d 667, 2003 D.C. App. LEXIS 753 (2003).

Pedestrian's noncompliance with rule requiring filing of proof of service upon corporation counsel compelled automatic dismissal of her personal injury action against the District of Columbia. *Dorsey v. District of Columbia*, 827 A.2d 32, 2003 D.C. App. LEXIS 420 (2003), amended by 839 A.2d 667, 2003 D.C. App. LEXIS 753 (D.C. 2003).

Pedestrian's argument that District of Columbia was not prejudiced by her failure to serve corporation counsel, because District was on notice due to her proper service of mayor, did not meet her initial burden, on motion to reinstate action, of offering some explanation for her failure to comply with service requirement. *Dorsey v. District of Columbia*, 827 A.2d 32, 2003 D.C. App. LEXIS 420 (2003), amended by 839 A.2d 667, 2003 D.C. App. LEXIS 753 (D.C. 2003).

Failure to serve mayor.

Congress having exclusive legislative authority over District of Columbia, method of service

of process, provided for by federal statute in suit against such district, is exclusive, so as to preclude service on Delaware Secretary of State, who is not one of persons on whom federal statute provides that service may be made in such suits. D.C. Code 1940, 1-901; U.S. Const. art. 1, § 8, cl. 17. *O'Toole v. United States*, 106 F. Supp. 804, 106 F. Supp. 804, 1952 U.S. Dist. LEXIS 4099 (1952).

Mistaken belief by injured motorist's attorney that service of complaint against District of Columbia on corporation counsel, as mayor's statutory agent, met requirements that both mayor and corporation counsel be served, did not constitute good cause for failure to comply with rule governing service of process, and thus, motorist was not entitled to vacate order of dismissal of complaint. *Thompson v. District of Columbia*, 863 A.2d 814, 2004 D.C. App. LEXIS 639 (2004).

Injured motorist's service of complaint against District of Columbia on corporation counsel alone compelled dismissal of complaint, pursuant to statute requiring service of process on both mayor and corporation counsel. *Thompson v. District of Columbia*, 863 A.2d 814, 2004 D.C. App. LEXIS 639 (2004).

In general.

Injured plaintiff's failure to serve process on persons designated by mayor and corporation counsel as agents authorized to receive service of process warranted dismissal of suit against District of Columbia. *Eldridge v. District of Columbia*, 866 A.2d 786, 2004 D.C. App. LEXIS 703 (2004).

To effect proper service of personal injury complaint upon the District of Columbia, pedestrian was required to serve corporation counsel, as well as the mayor. *Dorsey v. District of Columbia*, 827 A.2d 32, 2003 D.C. App. LEXIS 420 (2003), amended by 839 A.2d 667, 2003 D.C. App. LEXIS 753 (D.C. 2003).

§ 2-402. Settlement of claims and suits against District.

(a) The Mayor of the District of Columbia is empowered to settle, in his discretion, claims and suits, either at law or in equity, against the District of Columbia whenever the cause of action:

(1) Arises out of the negligence or wrongful act, either of commission or omission, of any officer or employee of the District of Columbia for whose negligence or acts the District of Columbia, if a private individual, would be liable prima facie to respond in damages, irrespective of whether such negligence occurred or such acts were done in the performance of a municipal or a governmental function of said District; provided, however, that nothing herein contained shall be construed as depriving the District of Columbia of any defense it may have to any suit, either at law or in equity, which may be instituted against it or to give any person, corporation, partnership, or

association any right to institute any suit against the District of Columbia which did not exist prior to June 5, 1930; or

(2) Arises out of the existence of facts and circumstances which place the claim or suit within the doctrines and principles of law decided by the courts in the District of Columbia or by the Supreme Court of the United States to be controlling in the District of Columbia.

(3)(A) In any case, claim, or suit, either at law or in equity, which the Mayor of the District of Columbia is empowered to settle, the payment for such settlement or judgment shall come from the current fiscal year operating budget of the agency or office named in the suit; provided that:

(i) The settlement or judgment is less than \$10,000; and

(ii) The case was originally filed not more than 2 years before the settlement or judgment.

(B) The Mayor may waive this requirement on a case-by-case basis for good cause shown.

(b)(1)(A) The District shall not enter into or execute any settlement agreement related to a contract disapproved by the Council pursuant to § 1-204.51 while the details of the disapproved contract are the subject of an active investigation by the Council, the Office of the District of Columbia Auditor, the Office of the Inspector General, or the United States Attorneys' Office and, unless otherwise authorized under paragraph (2) of this subsection, until 90 days following the completion of the investigation.

(B) The Office of the Chief Financial Officer, the District of Columbia Housing Authority, or any other District agency or authority shall not:

(i) Approve payment or disburse payment related to a contract disapproved by the Council pursuant to § 1-204.51 while the details of the disapproved contract are the subject of an active investigation by the Council, the Office of the District of Columbia Auditor, the Office of the Inspector General, or the United States Attorneys' Office and, unless otherwise authorized under paragraph (2) of this subsection, until 90 days following the completion of the investigation; or

(ii) Approve payment or disburse payment related to a settlement agreement executed in violation of subparagraph (A) of this subsection.

(2) The Council, by act approved by $\frac{2}{3}$ rds of its members, may authorize payment otherwise prohibited by paragraph (1) of this subsection within the 90 days following the completion of an investigation.

(Feb. 11, 1929, 45 Stat. 1160, ch. 173, § 1; June 5, 1930, 46 Stat. 500, ch. 400; July 29, 1970, 84 Stat. 575, Pub. L. 91-358, title I, § 157(e)(1); Oct. 19, 2000, D.C. Law 13-172, § 4302, 47 DCR 6308; Oct. 26, 2001, D.C. Law 14-42, § 27, 48 DCR 7612; Mar. 12, 2011, D.C. Law 18-319, § 2, 57 DCR 12433.)

Section references. — This section is referred to in §§ 2-403, 2-404, and 2-405.

Prior Codifications. — 1981 Ed., § 1-1202. 1973 Ed., § 1-902.

Effect of amendments. — D.C. Law 13-172 added par. (3).

D.C. Law 14-42 substituted "settlement or judgment" for "settlement".

D.C. Law 18-319 designated the existing text as subsec. (a); and added subsec. (b).

Emergency legislation. — For temporary (90-day) amendment of section, see § 4302 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of sec-

tion, see § 4302 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 27 of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

For temporary (90 day) amendment of section, see § 2 of Settlement Payment Integrity Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-14, February 11, 2011, 58 DCR 1438).

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 14-42. — Law 14-42, the “Technical Correction Amendment Act of 2001,” was introduced in Council and assigned Bill No. 14-216, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 5, 2001, and June 26, 2001, respectively. Signed by the Mayor on July 24, 2001, it was assigned Act No. 14-107 and transmitted to both Houses of Congress for its review. D.C. Law 14-42 became effective on October 26, 2001.

Legislative history of Law 18-319. — Law 18-319, the “Settlement Payment Integrity Amendment Act of 2010,” was introduced in Council and assigned Bill No. 18-899, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on November 9, 2010, and November 23, 2010, respectively. Enacted without signature of the Mayor on December 16, 2010, it was assigned Act No. 18-640 and transmitted to both Houses of Congress for its review. D.C. Law 18-319 became effective on March 12, 2011.

Delegation of Authority. — Delegation of Authority Pursuant to D.C. Official Code §§ 2-402 (2001) & 1-204.22 (6) (2001), to Delegate Authority to Make All Determinations Regarding Offers of Settlement of Any and All Claims Against the District of Columbia, and The Mayor of the District of Columbia in His Official Capacity in District Council 20, et al. v. District of Columbia, et al., (DDC) (EGS), see

Mayor’s Order 2001-134, September 13, 2001 (48 DCR 8998).

Re-Delegation of Authority to Settle or Compromise Claim (Office of Corporation Counsel File #77411), see Mayor’s Order 2002-174, November 1, 2002 (49 DCR 9882).

Editor’s notes. — Civil suits permitted: Act of December 29, 1979, 93 Stat. 1284, Pub. L. 96-170, provided that civil suits under § 1979 of the Revised Statutes (42 U.S.C. § 1983) are permitted against any person acting under color of any law or custom of the District of Columbia who subjects any person within the jurisdiction of the District of Columbia to the deprivation of any right, privilege, or immunity secured by the Constitution and laws occurring after the date of the enactment of Pub. L. 96-170.

Section 137 of Pub. L. 107-96, Dec. 21, 2001, 115 Stat. 923, provided: “RISK MANAGEMENT FOR SETTLEMENTS AND JUDGMENTS. In addition to any other authority to pay claims and judgments, any department, agency, or instrumentality of the District government may pay the settlement or judgment of a claim or lawsuit in an amount less than \$10,000, in accordance with the Risk Management for Settlements and Judgments Amendment Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code, Sec. 2-402).”

Section 3 of D.C. Law 18-319 provided: “Sec. 3. Applicability. This act shall apply as of June 30, 2010.”

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Agreement.
 Construction with other laws.
 Damages.
 Defenses.
 Evidence.
 In general.
 Nature of duty to plaintiff.
 Procedure.
 Questions of law and fact.
 Respondeat superior.
 Sovereign immunity.

Agreement.

Attorney's conduct and representations about his authority to reach settlement agreement on client's behalf in employment discrimination case were not dispositive to whether attorney had apparent authority to settle the matter; client herself had to furnish the basis for a reasonable belief that attorney was authorized to conclude the settlement. *Makins v. District of Columbia*, 861 A.2d 590, 2004 D.C. App. LEXIS 577 (2004).

Client's actions in sending her attorney to court-ordered settlement conference in employment discrimination action and permitting the attorney to negotiate on client's behalf were insufficient to permit a reasonable belief by the opposing party that attorney had been delegated authority to conclude the settlement, and thus attorney did not have apparent authority to enter into settlement agreement; some additional manifestation by client was necessary to establish that she had given her attorney final settlement authority. *Makins v. District of Columbia*, 861 A.2d 590, 2004 D.C. App. LEXIS 577 (2004).

Construction with other laws.

District of Columbia's judgment and settlement fund did not satisfy the requirements of the Anti-Deficiency Act (ADA), forbidding government contracting officers from obligating funds that had not been appropriated, in regard to repayment agreement between surety, which had issued performance bond for general contractor, and District pursuant to which District agreed to repay funds in excess of \$12 million that surety had paid to District to partially settle claims against general contractor, plus various costs, fees and expenses incurred by surety, if it was found that District's termination of general contractor was not justified; there was no judgment requiring District to pay surety's costs, fees and expenses, repayment agreement was not a settlement in the relevant sense as it only created a claim that surety might acquire against the District in the future, and District's liability under the agree-

ment was open-ended. *Ins. Co. of N. Am. v. District of Columbia*, 948 A.2d 1181, 2008 D.C. App. LEXIS 252 (2008).

Paying a judgment in a breach of contract action against the District of Columbia out of the District's separate appropriation for the payment of judgments and settlements would not violate the Anti-Deficiency Act (ADA). *Ins. Co. of N. Am. v. District of Columbia*, 948 A.2d 1181, 2008 D.C. App. LEXIS 252 (2008).

Damages.

Award of punitive damages against officers, under District of Columbia law, for death of citizen they used as operative in drug buy was supported by sufficient evidence; officers sent operative, unwatched and unmonitored, into housing complex that they should have realized was source of criminal narcotics sales and violence, without making the requisite threshold evaluation of need to use citizen as police operative and thereby expose him to potential danger. *Butera v. District of Columbia*, 235 F.3d 637, 2001 U.S. App. LEXIS 216 (C.A.D.C. 2001).

Evidence was not sufficient to support finding that police officers shot perpetrator with an evil motive or actual malice to support award of punitive damages in action brought by representatives of deceased perpetrator's estate which alleged officers used excessive force in killing perpetrator after perpetrator held his mother hostage at knifepoint; no evidence existed that the officers knew perpetrators or had ever had any contact with him before they entered apartment where he held mother hostage, and no inference of malice was evident in the manner of entry by the officers or in the initial shots fired at perpetrator. *District of Columbia v. Jackson*, 810 A.2d 388, 2002 D.C. App. LEXIS 658 (2002).

Trial judge did not abuse her discretion in ordering remittitur that reduced compensatory damages from \$2,149,998 to \$180,000 in wrongful death and survival actions brought by representatives of deceased perpetrator's estate who claimed officers used excessive force in killing perpetrator after holding mother hostage at knifepoint; award totaling \$2,149,998 was out of proportion to perpetrator's very brief but real pain and suffering and to the loss of services and care, education, training, guidance and parental advice this particular perpetrator could have been expected to have given his daughter for five years until she turned eighteen. *District of Columbia v. Jackson*, 810 A.2d 388, 2002 D.C. App. LEXIS 658 (2002).

Defenses.

To evaluate substantive due process claim in which State officials have raised defense of

qualified immunity, court must first address whether plaintiff has alleged deprivation of actual constitutional right at all, identifying the constitutional right at appropriate level of specificity, and second, whether that right was "clearly established," that is, whether, at time of events in question, contours of the right were sufficiently clear that reasonable officer would understand that what he was doing violated that right. *Butera v. District of Columbia*, 235 F.3d 637, 2001 U.S. App. LEXIS 216 (C.A.D.C. 2001).

Jury could reasonably infer, in negligence action against District of Columbia arising from fatal collision at intersection controlled by malfunctioning traffic light, that motorist who was killed looked to his left and saw other car before pulling out into intersection, based on evidence that motorist stopped at intersection and that his front-seat passenger looked to the left and saw other car but did not observe whether motorist did so. *Haight v. District of Columbia*, 783 A.2d 590, 2001 D.C. App. LEXIS 222 (2001).

Fact that motorist who was killed in collision at intersection governed by malfunctioning traffic light was entering a busy thoroughfare with four lanes in each direction was relevant to the care he was required to exercise in the circumstances, for purposes of determining any contributory negligence in action against District of Columbia, even if that motorist had technical "right of way" as the driver entering from the right. *Haight v. District of Columbia*, 783 A.2d 590, 2001 D.C. App. LEXIS 222 (2001).

Whether southbound motorist who was killed in collision with westbound motorist at intersection controlled by malfunctioning traffic light was contributorily negligent was for jury to decide in negligence action against District of Columbia, in view of testimony that, if believed, permitted inferences that southbound motorist stooped at intersection and saw westbound vehicle, and that westbound vehicle was as much as 300 feet and five seconds away when southbound motorist pulled into intersection. *Haight v. District of Columbia*, 783 A.2d 590, 2001 D.C. App. LEXIS 222 (2001).

Jury's rejection of contributory negligence in returning verdict for southbound motorist's estate, in negligence action against District of Columbia arising from collision with westbound vehicle at intersection controlled by malfunctioning traffic light, was not against clear weight of the evidence so as to warrant new trial, where two witnesses, including a disinterested eyewitness, placed westbound vehicle up to 300 feet away when southbound motorist pulled out. *Haight v. District of Columbia*, 783 A.2d 590, 2001 D.C. App. LEXIS 222 (2001).

Any defenses available to individual police officers of District of Columbia in suit for as-

sault, battery, false arrest or imprisonment are also available to District if it is party to suit. *Wade v. District of Columbia*, 310 A.2d 857, 1973 D.C. App. LEXIS 374 (1973).

Evidence.

Evidence was sufficient to support finding that police officers' action of shooting at perpetrator until he was dead exceeded the force reasonably necessary to prevent serious bodily harm to perpetrator's mother, who was held hostage by perpetrator, or officers to support award of compensatory damages for assault and battery to representatives of deceased perpetrator's estate in action brought by representatives for officers alleged use of excessive force in killing perpetrator after holding mother hostage at knifepoint; mother testified that pauses occurred between successive rounds of shots and that as shooting continued, she heard one officer say to the others, "why don't you stop shooting," and other testimony permitted an inference that an officer had moved mother well out of defendant's reach after first two shots had been fired. *District of Columbia v. Jackson*, 810 A.2d 388, 2002 D.C. App. LEXIS 658 (2002).

Evidence was sufficient to support jury's findings that District of Columbia's failure to provide adequate traffic control measures when traffic light was not functioning was substantial factor in causing pedestrian to be struck and injured by motorist's car and that this accident was foreseeable consequence of absence of any traffic control devices for purposes of pedestrian's negligence action; even though motorist's conduct, striking pedestrian in crosswalk, violated criminal statute, pedestrian met his heightened burden of showing that motorist's actions were foreseeable in light of District's negligence. *District of Columbia v. Carlson*, 793 A.2d 1285, 2002 D.C. App. LEXIS 66 (2002).

In general.

In action by mother against District of Columbia and police officers arising from beating death of her son while he served as undercover operative, district court's definition of scope of constitutional rights at issue as operative's right to life, bodily integrity, personal security, and personal privacy, and mother's "liberty interest" in companionship of her son was overly broad; relevant inquiries were whether operative had constitutional right to protection by District from danger that it created or enhanced that resulted in harm by third parties, and whether mother had liberty interest in society and companionship of her independent adult child. *Butera v. District of Columbia*, 235 F.3d 637, 2001 U.S. App. LEXIS 216 (C.A.D.C. 2001).

To establish national standard of care for District of Columbia police in negligence action, expert must do more than rely on his own experience or simply declare that District violated national standard of care; expert must refer to commonly used police procedures, identifying specific standards by which jury could measure defendant's actions, but expert need not enumerate facilities across the country at which that standard is in effect. *Butera v. District of Columbia*, 235 F.3d 637, 2001 U.S. App. LEXIS 216 (C.A.D.C. 2001).

In action against District of Columbia for death of citizen used by police as operative in drug buy, national standard of care was established by testimony of officer with 25 years' experience, which included experience as control officer for undercover drug purchases and participation with federal agencies in undercover operations; officer had consulted with police officers, reviewed department's general orders and examined training manuals. *Butera v. District of Columbia*, 235 F.3d 637, 2001 U.S. App. LEXIS 216 (C.A.D.C. 2001).

Lessee of property which was destroyed during riot had no substantive right to recover from the District of Columbia its losses resulting from failure of the District or its officers to keep the peace. *Westminster Investing Corp. v. G. C. Murphy Co.*, 434 F.2d 521, 1970 U.S. App. LEXIS 6988 (C.A.D.C. 1970).

Notwithstanding that District of Columbia was in performance of governmental function, commissioners of District had authority under statutes to compromise claim by innocent citizen who was attacked by unleashed, unmuzzled police dog which had been released by police officer to arrest a suspected housebreaker running through an alley. D.C. Code 1961, §§ 1-902, 47-2005. *Harbin v. District of Columbia*, 336 F.2d 950, 1964 U.S. App. LEXIS 4821 (C.A.D.C. 1964).

Agencies and departments within the District of Columbia are not suable as separate entities. *Jones v. District of Columbia*, 346 F.Supp.2d 25, 2004 U.S. Dist. LEXIS 23304 (2004), affirmed in part and reversed in part by, remanded by 429 F.3d 276, 368 U.S. App. D.C. 279, 2005 U.S. App. LEXIS 24523, 87 Empl. Prac. Dec. (CCH) P42144, 96 Fair Empl. Prac. Cas. (BNA) 1441 (2005).

Neither District of Columbia nor its officers were amenable to suit under statute providing federal remedies in suits against state officers based on acts committed under color of state law and in violation of rights, privileges and immunities secured under the Constitution and laws of the United States in civil rights class action brought by plaintiff who, following his arrest, was taken into custody and held for 32 hours before being presented to superior court judge for setting of bail. 42 U.S.C. § 1983.

Jones v. District of Columbia, 424 F. Supp. 110, 1977 U.S. Dist. LEXIS 18039 (1977).

District of Columbia is not liable for a decision not to install a traffic control device at an intersection, but once it does so, it may be liable if it fails to maintain that device. *District of Columbia v. Carlson*, 793 A.2d 1285, 2002 D.C. App. LEXIS 66 (2002).

Suit which sought to recover damages for loss of property stored in a warehouse partially destroyed by rioting mobs and which was based on allegation of negligent failure to provide against such an occurrence failed to state a valid claim for relief against District of Columbia. *Amos v. District of Columbia*, 309 A.2d 305, 1973 D.C. App. LEXIS 353 (1973).

Nature of duty to plaintiff.

Under the public duty doctrine, the District of Columbia and its agents owe no duty to provide public services to particular citizens as individuals; rather, absent some special relationship between the government and the individual, the District's duty is to provide public services to the public at large. *Liser v. Smith*, 254 F.Supp.2d 89, 2003 U.S. Dist. LEXIS 4544 (2003).

Alleged negligent misrepresentation of fact by District police officers to parents of two minor children, that the children were safely out of the burning house, so that parents abandoned their rescue efforts, did not make the children's condition worse, and thus, the public duty doctrine precluded an action against the District under the survival and wrongful death statutes. *Miller v. District of Columbia*, 841 A.2d 1244, 2004 D.C. App. LEXIS 42 (2004).

Under the "public duty doctrine" a government and its agents owe no general duty to provide public services, such as police protection, to particular citizens as individuals. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

To establish a special relationship within the meaning of the public duty doctrine, affirmative negligence is required, as opposed to inaction or futile action. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

Mother of murder victim failed to show that victim justifiably relied on police for protection in connection with his alleged role as informant, and thus, public duty doctrine precluded mother's recovery in wrongful death and survival action against District; affidavits submitted by mother and her other son revealed that neither was aware of victim's alleged role as informant, it was likely that they would have been told if police had promised to provide protection, neither mother's affidavit nor that of victim's friend mentioned any promise made by police to protect victim and his family, and record excerpts from detective's deposition did not mention any promise of protection. *Taylor v.*

District of Columbia, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

For purposes of the public duty doctrine, more than general reliance is needed to require the police to act on behalf of a particular individual; rather, the plaintiff must specifically act, or refrain from acting, in such a way as to exhibit particular reliance upon the actions of the police in providing personal protection. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

The public duty doctrine provides that absent some "special relationship" between the government and the individual, the District's duty is to provide public services to the public at large. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

For purposes of the public duty doctrine, the general duty owed to the public may become a specific duty owed to an individual if the police and the individual are in a special relationship different from that existing between the police and citizens generally. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

For purposes of the public duty doctrine, a special duty or special relationship may be established by a statute that prescribes mandatory acts clearly for the protection of a particular class of persons rather than the public as a whole. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

To show a direct or continuing contact between an injured person and a governmental agency or official, for purposes of establishing a special relationship within the meaning of the public duty doctrine, the contact must be a direct transaction with the party injured or an arms-length relationship in which the city's agent is dealing directly, in some form, with the person injured, and the government must engage in an affirmative undertaking of protection on which the victim justifiably relies. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

Rules in government agency's handbook may provide evidence of a standard of reasonable care, for purposes of negligence action. *District of Columbia v. Harris*, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

When the intervening criminal act of a third party causes the injury, the District is liable for negligence only if it should have reasonably anticipated and protected against the danger of that act; foreseeability of the risk must be more precisely demonstrated, which does not require previous occurrences of the particular type of harm, but which can be met instead by a combination of factors that give defendants an increased awareness of the danger of a particular criminal act. *District of Columbia v. Harris*, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

To determine whether District may be held liable, court must analyze whether duty owed to victim is a general duty to public-at-large, in which case public duty doctrine insulates District from liability, or special duty to plaintiff, in which case the 'special relationship' exception to public duty doctrine applies and District is subject to suit. *Powell v. District of Columbia*, 602 A.2d 1123, 1992 D.C. App. LEXIS 46 (1992).

Procedure.

Dismissal without prejudice was not abuse of discretion in response to District of Columbia's unopposed motion to dismiss for incomplete service of process due to lack of receipt from corporation counsel. *Murray v. District of Columbia*, 870 A.2d 25, 2005 D.C. App. LEXIS 56 (2005).

Evidence that police officer's conduct in arresting family members was outrageous conduct that was malicious, wanton, reckless, or in willful disregard of the family's rights was sufficient to submit punitive damages issue to the jury in family's action against District and officer for false arrest and malicious prosecution. *Tolson v. District of Columbia*, 860 A.2d 336, 2004 D.C. App. LEXIS 564 (2004).

Prisoner, who was allegedly assaulted by fellow inmate, was entitled to relief from default judgment which was entered against him on his civil complaint against District of Columbia, alleging that District was negligent with respect to its supervision of inmates and that prisoner's constitutional rights were violated; neither prisoner nor his counsel had actual notice of the scheduling conference, prisoner filed his motion for relief from judgment about a week after he found out that default judgment had been entered, and District would not be prejudiced by granting of motion. *Lester v. District of Columbia*, 806 A.2d 206, 2002 D.C. App. LEXIS 515 (2002).

Questions of law and fact.

Question whether motorist was contributorily negligence because she failed to maintain proper lookout while driving was for jury in negligence action by motorist who was struck by bus against District of Columbia for failing to replace missing stop sign, where bus driver stated that he never saw motorist's vehicle stop before entering intersection and that both motorists' vehicle and bus entered intersection at approximately same time. *Majeska v. District of Columbia*, 812 A.2d 948, 2002 D.C. App. LEXIS 739 (2002).

Question whether District of Columbia's failure to replace missing stop sign was proximate of injuries to motorist who was struck by bus was for jury in motorist's negligence action against District, where jury could reasonably have concluded that accident was foreseeable result of missing stop sign. *Majeska v. District*

of Columbia, 812 A.2d 948, 2002 D.C. App. LEXIS 739 (2002).

Question whether District of Columbia's failure to replace missing stop sign was cause-in-fact of injuries to motorist who was struck by bus was for jury in motorist's negligence action against District, where evidence showed that stop sign was missing and had been missing for several months, motorist stated that it was her custom to pay attention to traffic control devices and stop for stop signs, and bus driver testified that he never saw motorist stop before entering intersection. *Majeska v. District of Columbia*, 812 A.2d 948, 2002 D.C. App. LEXIS 739 (2002).

Respondeat superior.

Fact that civil rights statute does not provide basis for suits against municipalities did not preclude District of Columbia from being held liable, under doctrine of respondeat superior, for any false arrest and denial of civil rights by chief of metropolitan police department as alleged in a Bivens action. 42 U.S.C. § 1983. *Dellums v. Powell*, 566 F.2d 216, 1977 U.S. App. LEXIS 12164 (C.A.D.C. 1977), writ of certiorari denied by 438 U.S. 916, 98 S. Ct. 3146, 98 S. Ct. 3147, 57 L. Ed. 2d 1161, 1978 U.S. LEXIS 2450 (1978).

Prisoner could recover from District of Columbia on complaint charging unprovoked assault with sticks, including pickhandle, wielded by prison guards in District of Columbia, and serious back injury resulting, providing he could bring conduct complained of within confines of respondeat superior, lacking which proof his action would fail. *Baker v. Washington*, 448 F.2d 1200, 1971 U.S. App. LEXIS 8593 (C.A.D.C. 1971).

The District of Columbia is vicariously liable, under the doctrine of respondeat superior, for negligence by its officers who are acting within the scope of their employment. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

District of Columbia may be sued under common-law doctrine of respondeat superior for intentional torts of its employees acting within scope of their employment. D.C. Code § 1-922.

Wade v. District of Columbia, 310 A.2d 857, 1973 D.C. App. LEXIS 374 (1973).

Sovereign immunity.

District of Columbia, as municipal corporation, is immune from punitive damages under §§ 1983. *Butera v. District of Columbia*, 235 F.3d 637, 2001 U.S. App. LEXIS 216 (C.A.D.C. 2001).

District of Columbia was not immune from suit for injuries sustained when plaintiff was arrested for drunkenness and placed in crowded cell where another prisoner assaulted him brutally on theory that maintaining police department and prisons are governmental functions. *Graham v. District of Columbia*, 433 F.2d 536, 1970 U.S. App. LEXIS 7792 (C.A.D.C. 1970).

District of Columbia General Hospital was not immune from suit for injuries sustained by paying patient allegedly as result of negligent treatment on theory that District was a governmental entity. *Spencer v. General Hospital of Dist. of Columbia*, 425 F.2d 479, 1969 U.S. App. LEXIS 10117 (C.A.D.C. 1969).

The doctrine of sovereign immunity did not bar claim against District of Columbia by innocent citizen who was attacked by unleashed, unmuzzled police dog which had been released by police officer to arrest a suspected house-breaker running through an alley. D.C. Code 1961, §§ 1-902, 47-2005. *Harbin v. District of Columbia*, 336 F.2d 950, 1964 U.S. App. LEXIS 4821 (C.A.D.C. 1964).

The test for determining whether a given governmental function of the District of Columbia is discretionary and therefore one to which immunity from suit ought to be applied is whether that function is of such a nature as to pose threats to the quality and efficiency of government in the District if liability in tort was made the consequence of negligent act or omission. *Shifrin v. Wilson*, 412 F. Supp. 1282, 1976 U.S. Dist. LEXIS 16230 (1976).

District of Columbia did not waive its defense of immunity from suit arising out of collision between private vehicle and Police Department patrol wagon by filing suit against driver of such vehicle. D.C. Code 1951, §§ 1-102, 1-902 to 1-905, 12-208. *Adams v. District of Columbia*, 122 A.2d 765, 1956 D.C. App. LEXIS 269 (Cr.App. 1956).

§ 2-403. Refund where assessments held void.

(a) The Mayor of the District of Columbia is hereby authorized and empowered to grant relief in claims for refund of taxes paid, or for cancellation of assessments heretofore made and subsequent to September 1, 1916, in such cases where like assessments, or assessments against property of similar character, have been held to be void or erroneous by decision of the courts in the District of Columbia or the Supreme Court of the United States: Provided, that any claims for refunds of taxes paid before February 11, 1929, or for

cancellations of assessments before February 11, 1929, shall be filed within 1 year from February 11, 1929.

(b) Nothing contained in §§ 2-402 to 2-405 shall be construed as reducing the period of the statute of limitations.

(Feb. 11, 1929, 45 Stat. 1160, ch. 173, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 575, Pub. L. 91-358, title I, § 157(e)(2).)

Cross references. — Real property tax sales, refund of erroneously paid taxes, see § 47-1317.

Section references. — This section is referred to in §§ 2-404 and 2-405.

Prior Codifications. — 1981 Ed., § 1-1203. 1973 Ed., § 1-903.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

Suit against District of Columbia for refund of void improvement assessments paid more than three years before held barred where not filed within one-year period authorized by statute relative to refunds (Act Feb. 11, 1929, § 2,

45 Stat. 1160; D.C. Code 1929, T. 24, § 341). Lake, to Use of Peyser, v. District of Columbia, 72 F.2d 174, 1934 U.S. App. LEXIS 4488 (1934).

§ 2-404. Report to Congress; appropriations.

All settlements entered into by the Mayor of the District of Columbia acting under the terms and provisions of §§ 2-402 to 2-405 shall be presented to the Congress, together with a brief statement of the nature of the claim or suit, the amount claimed, and the amount of the settlement, with a summary of the evidence and circumstances under which the settlement was made. Appropriations for the payment of such settlements are hereby authorized, payment thereof to be made in the same manner as are other expenditures for the District of Columbia.

(Feb. 11, 1929, 45 Stat. 1160, ch. 173, § 3; July 31, 1951, 65 Stat. 131, ch. 274, § 1; Feb. 26, 1981, D.C. Law 3-114, § 2(a), 27 DCR 5628.)

Section references. — This section is referred to in §§ 2-403 and 2-405.

Prior Codifications. — 1981 Ed., § 1-1204. 1973 Ed., § 1-904.

Legislative history of Law 3-114. — Law 3-114 was introduced in Council and assigned Bill No. 3-64, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 12,

1980 and December 9, 1980, respectively. Signed by the Mayor on December 18, 1980, it was assigned Act No. 3-308 and transmitted to both Houses of Congress for its review.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished

the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Construction with other laws.

District of Columbia's judgment and settlement fund did not satisfy the requirements of the Anti-Deficiency Act (ADA), forbidding government contracting officers from obligating funds that had not been appropriated, in regard to repayment agreement between surety, which had issued performance bond for general contractor, and District pursuant to which District agreed to repay funds in excess of \$12 million that surety had paid to District to partially settle claims against general contractor, plus various costs, fees and expenses incurred by surety, if it was found that District's termination of general contractor was not justified; there was no judgment requiring District to pay

surety's costs, fees and expenses, repayment agreement was not a settlement in the relevant sense as it only created a claim that surety might acquire against the District in the future, and District's liability under the agreement was open-ended. *Ins. Co. of N. Am. v. District of Columbia*, 948 A.2d 1181, 2008 D.C. App. LEXIS 252 (2008).

Paying a judgment in a breach of contract action against the District of Columbia out of the District's separate appropriation for the payment of judgments and settlements would not violate the Anti-Deficiency Act (ADA). *Ins. Co. of N. Am. v. District of Columbia*, 948 A.2d 1181, 2008 D.C. App. LEXIS 252 (2008).

§ 2-405. Effective date.

Sections 2-402 to 2-405 shall take effect from and after February 11, 1929, but nothing herein contained shall be construed as prohibiting the Mayor of the District of Columbia from proceeding according to the terms and provisions hereof to settle any claim or suit pending on February 11, 1929, irrespective of the date of presentation of the claim to the Mayor of the District of Columbia or the date of the filing of the suit.

(Feb. 11, 1929, 45 Stat. 1161, ch. 173, § 4.)

Section references. — This section is referred to in §§ 2-403 and 2-404.

Prior Codifications. — 1981 Ed., § 1-1205. 1973 Ed., § 1-905.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-406. Compromise of claim or suit.

Upon a report by the Corporation Counsel of the District of Columbia showing in detail the just and true amount and condition of any claim or suit

which the District of Columbia may on July 31, 1951, or thereafter have against any person, firm, association, or corporation, and the terms upon which the same may be compromised, and stating that in his opinion a compromise of such claim or suit would be for the best interest of the District of Columbia, the Mayor of the District of Columbia hereby is authorized to compromise such claim or suit accordingly: Provided, that this section shall not apply to claims or suits for taxes or special assessments.

(Feb. 11, 1929, 45 Stat. 1161, ch. 173, § 5; July 31, 1951, 65 Stat. 131, ch. 274, § 2; June 28, 1967, 81 Stat. 81, Pub. L. 90-33, § 1; July 29, 1970, 84 Stat. 577, Pub. L. 91-358, title I, § 158(f); Feb. 26, 1981, D.C. Law 3-114, § 2(b), 27 DCR 5628.)

Prior Codifications. — 1981 Ed., § 1-1206. 1973 Ed., § 1-906.

Legislative history of Law 3-114. — For legislative history of D.C. Law 3-114, see Historical and Statutory Notes following § 1-1204.

Editor's notes. — Settlement of Monetary Penalties resulting from Parking Infractions, see Mayor's Order 2011-127, July 29, 2011 (58 DCR 6691).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 2-407. Damage to personal property of District employee incident to service. [Repealed].

Repealed.

(Aug. 31, 1964, Pub. L. 88-558, § 3(f); Oct. 12, 1968, 82 Stat. 998, Pub. L. 90-561; Sept. 13, 1982, 96 Stat. 877, Pub. L. 97-258, § 5(b).)

Cross references. — District of Columbia administration, status of volunteers, see § 1-319.03.

Prior Codifications. — 1981 Ed., § 1-1207. 1973 Ed., § 1-907.

Subchapter II. Non-Liability of District Employees.

§ 2-411. Definitions.

As used in this subchapter the term:

(1) "Mayor" means the Mayor of the District of Columbia, or his designated agent.

(2) "Court" means the court in the District of Columbia having the necessary civil jurisdiction pursuant to § 11-501 or § 11-921.

(3) "District" means the government of the District of Columbia, a municipal corporation.

(4) "Emergency run" means the movement of a District-owned vehicle, by

direction of the operator or of some other authorized person or agency, under circumstances which lead the operator or such persons or agency to believe that such vehicle should proceed expeditiously upon a particular mission or to a designated location for the purpose of dealing with a supposed fire or other emergency, an alleged violation of a statute or regulation, or other incident requiring emergency action, or the prompt transportation to a place of treatment or greater safety of an alleged sick or injured person.

(5) "Emergency vehicle" means a vehicle assigned:

(A) To the Fire Department of the District or to the Metropolitan Police Department and not designated by the Mayor as a nonemergency vehicle; or

(B) To other departments or officials of the District and designated by the Mayor as an emergency vehicle.

(6) "Employee" means a person serving as an officer or employee of the District, whether or not paid by the District, or a person formerly so engaged, or the representative of a deceased officer or employee of the District.

(7) "Vehicle" means every type of conveyance or machine capable of movement on land, or in water or air, including an animal being ridden and any animal-drawn machinery or conveyance.

(8) "Medical employees of the District of Columbia" shall include physicians, psychologists, dentists, optometrists, podiatrists, nurses, nursing assistants, emergency medical technician, emergency medical technician/intermediate paramedic, emergency medical technician/paramedic, physicians' assistants, laboratory technicians, physical therapists, osteopaths, chiroprodists and chiropractors in the employment of the District of Columbia.

(July 14, 1960, 74 Stat. 519, Pub. L. 86-654, § 2; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 575, Pub. L. 91-358, title I, § 157(h); Mar. 26, 1976, D.C. Law 1-59, § 2, 22 DCR 5473; Sept. 28, 1977, D.C. Law 2-25, § 4, 24 DCR 3718; Aug. 1, 1981, D.C. Law 4-25, § 4, 28 DCR 2622; April 9, 1997, D.C. Law 11-169, § 2, 43 DCR 4478.)

Section references. — This section is referred to in § 1-319.03.

Prior Codifications. — 1981 Ed., § 1-1211. 1973 Ed., § 1-921.

Legislative history of Law 1-59. — Law 1-59 was introduced in Council and assigned Bill No. 1-204, which was referred to the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on December 2, 1975 and December 16, 1975, respectively. Signed by the Mayor on January 9, 1976, it was assigned Act No. 1-84 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-25. — Law 2-25 was introduced in Council and assigned Bill No. 2-136, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 14, 1977 and June 28, 1977, respectively. Signed by the Mayor on July 8, 1977, it was assigned Act No. 2-56 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-25. — Law 4-25 was introduced in Council and assigned Bill No. 4-198, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1981, and May 19, 1981, respectively. Signed by the Mayor on June 5, 1981, it was assigned Act No. 4-46 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-169. — Law 11-169, the "Commissioner Mental Health Services Psychologists Protection Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-115, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 19, 1996, it was assigned Act No. 11-316 and transmitted to both Houses of Congress for its review. D.C. Law 11-169 became effective on April 9, 1997.

Change in Government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Emergency run.
Emergency vehicles.

Emergency run.

So long as circumstances lead an operator of an emergency vehicle to believe that a supposed emergency requires the action, the operator is on an emergency run and his or her conduct enjoys the statutory protection against claims for ordinary negligence; there is no requirement that the circumstances be reasonable or justifiable. *District of Columbia v. Chambers*, 965 A.2d 5, 2009 D.C. App. LEXIS 30 (2009).

Even if a police officer testifies that he did not believe that he was on an emergency run, his actions legally may demonstrate in fact that he believed it necessary to proceed expeditiously in pursuit of a driver, such that the officer was on an emergency run and his or her conduct enjoys the statutory protection against claims for ordinary negligence. *District of Columbia v. Chambers*, 965 A.2d 5, 2009 D.C. App. LEXIS 30 (2009).

District of Columbia police officer was engaged in an emergency run at the time that a vehicle that she was pursuing, which was driven by a juvenile, collided with a motorist's van, and thus the District was immune from liability for the motorist's injuries unless the officer was grossly negligent; officer was proceeding expeditiously in a District-owned police car in response to the juvenile's increased and high rates of speed, his failure to halt at stop signs, and his reckless driving, and the officer followed the juvenile, concluded that she needed to stop him, and increased her speed and ultimately activated her emergency lights and siren to accomplish her mission of stopping him because of his recklessness. *District of Columbia v. Chambers*, 965 A.2d 5, 2009 D.C. App. LEXIS 30 (2009).

In determining whether police officer was on emergency run, such that District of Columbia would be liable only for gross negligence with respect to collision with another vehicle, issue was whether officer subjectively believed he

was responding to emergency. *Dickson v. District of Columbia*, 938 A.2d 688, 2007 D.C. App. LEXIS 697 (2007).

Police officer who was pursuing motorist genuinely believed he should pursue fleeing motorist expeditiously, and thus officer was on an "emergency run" for which District of Columbia would be liable only for gross negligence; although officer denied "chasing" motorist, officer observed youthful motorist driving erratically, motorist fled when officer attempted to pull him over, and officer testified that it was an emergency that he follow motorist because motorist was driving recklessly. *Duggan v. District of Columbia*, 884 A.2d 661, 2005 D.C. App. LEXIS 516 (2005).

For purposes of determination as to whether operator of emergency vehicle was on an "emergency run," such that District of Columbia would be liable only for gross negligence, operator's subjective belief that a supposed emergency requires expeditious movement need not be reasonable. *Duggan v. District of Columbia*, 884 A.2d 661, 2005 D.C. App. LEXIS 516 (2005).

Emergency vehicles.

What constitutes an emergency run, within meaning of statute requiring showing of gross negligence of operator of police car on an emergency run in order for District to be liable for personal injury or death, may depend on factual disputes which must be resolved by a jury. *Duggan v. District of Columbia*, 783 A.2d 563, 2001 D.C. App. LEXIS 220 (2001), vacated by 797 A.2d 1233, 2002 D.C. App. LEXIS 103 (D.C. 2002), superseded by, remanded by 884 A.2d 661, 2005 D.C. App. LEXIS 516 (D.C. 2005).

Pursuing officer's testimony that he was not on an emergency run, and evidence that officer's pursuit of vehicle violated police department's internal operating manual that prohibited pursuits to effect a traffic stop, created issue for jury as to whether officer was not on an emergency run, so that ordinary negligence rather than gross negligence would be required to hold District liable for personal injuries sustained by passenger of vehicle that was struck by pursued motorist's vehicle. *Duggan v.*

District of Columbia, 783 A.2d 563, 2001 D.C. App. LEXIS 220 (2001), vacated by 797 A.2d 1233, 2002 D.C. App. LEXIS 103 (D.C. 2002), superseded by, remanded by 884 A.2d 661, 2005 D.C. App. LEXIS 516 (D.C. 2005).

District of Columbia fire department's policy decision, which dictated circumstances in which its ambulance operators must respond with emergency run, spoke to the statutory provision that the agency may determine when ambulance is on emergency run for purposes of statute providing that District is liable only for gross negligence in case of claim arising out of operation of emergency vehicle on emergency run. D.C. Code §§ 1-1211(4), 1-1212. Browner

v. District of Columbia, 756 A.2d 927, 2000 D.C. App. LEXIS 184 (2000).

Definition of "emergency vehicle" should not have been limited to police car which had both overhead lights and siren activated, for purposes of statute limiting liability to gross negligence for claim arising out of operation of emergency vehicle on emergency run, notwithstanding police department's general order defining emergency vehicle as departmental vehicle equipped with and actually operating various listed warning devices. D.C. Code 1981, § 1-1212. Abney v. District of Columbia, 580 A.2d 1036, 1990 D.C. App. LEXIS 243 (1990).

§ 2-412. Governmental immunity for negligent operation of vehicles by District employees.

Hereafter the District of Columbia shall not assert the defense of governmental immunity in any suit at law in which a claim is asserted against it for money only on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omission of any employee of the District occurring as the result of the operation by such employee, within the scope of his office or employment, of a vehicle owned or controlled by the District: Provided, that in the case of a claim arising out of the operation of an emergency vehicle on an emergency run the District shall be liable only for gross negligence. Nothing contained in this subchapter shall be construed as depriving the District of any other defense in law or equity which it may have to any such action or give to any person, corporation, partnership, or association any right to institute or maintain any suit against the District which it did not have prior to July 14, 1960.

(July 14, 1960, 74 Stat. 519, Pub. L. 86-654, § 3.)

Section references. — This section is referred to in §§ 1-319.03, 2-413, and 2-414.

Prior Codifications. — 1981 Ed., § 1-1212. 1973 Ed., § 1-922.

Emergency legislation. — For temporary

(90 day) amendment of section, see § 2(a) of District of Columbia Employee Non-Liability and Notice of Claim Clarification Emergency Amendment Act of 2002 (D.C. Act 14-499, October 23, 2002, 49 DCR 10022).

CASE NOTES

ANALYSIS

Burden of proof.
Construction and application.
Governmental immunity.
Gross negligence.
—Emergency run, gross negligence.
—Emergency vehicle, gross negligence.
—In General.
—Police training, gross negligence.
—Police vehicle, gross negligence.
—Standard of care, gross negligence.
Jury instructions.
Public duty doctrine.

Questions for court.
Questions for jury.
Review.
Sufficiency of evidence.
Validity.

Burden of proof.

As in any negligence case, the plaintiff alleging the gross negligence of the operator of a police car on an emergency run, as basis for District's liability for personal injury or death, must establish the applicable standard of care, a deviation from that standard by the operator, and a causal relationship between that deviation

tion and the plaintiff's injury. *Duggan v. District of Columbia*, 783 A.2d 563, 2001 D.C. App. LEXIS 220 (2001), vacated by 797 A.2d 1233, 2002 D.C. App. LEXIS 103 (D.C. 2002), superseded by, remanded by 884 A.2d 661, 2005 D.C. App. LEXIS 516 (D.C. 2005).

Construction and application.

Provision of District of Columbia code which expressly waives immunity for District for negligent operation of District-owned vehicle by District employees, except for claims arising out of operation of emergency vehicle on emergency run, for which District is liable only for gross negligence was inapplicable to Virginia county and one of its police officers in action arising out of negligent high-speed police pursuit of suspected bank robber into District of Columbia by Virginia police officer. D.C. Code 1981, § 1-1212. *Biscoe v. Arlington County*, 738 F.2d 1352, 1984 U.S. App. LEXIS 20780 (C.A.D.C. 1984), writ of certiorari denied by 469 U.S. 1159, 105 S. Ct. 909, 83 L. Ed. 2d 923, 1985 U.S. LEXIS 557, 53 U.S.L.W. 3507 (1985).

District of Columbia Employee Non-Liability Act providing that District of Columbia "hereafter" shall not assert defense of governmental immunity in case of negligent or wrongful act or omission of employee of District of Columbia is not applicable retroactively in instance in which employee of District of Columbia was not defendant in suit pending at time of effective date of act. D.C. Code 1961, § 1-921 et seq. *Van Voorhis v. District of Columbia*, 240 F. Supp. 822, 1965 U.S. Dist. LEXIS 7005 (D.D.C.1965).

The District of Columbia Employee Non-Liability Act applies retroactively as well as prospectively, where it provides that if action against employee of District of Columbia for personal injury or property damage is pending as of effective date of act and the District of Columbia has not been named as defendant, the District of Columbia should be joined as defendant and action should be dismissed as to employee. D.C. Code 1961, §§ 1-921 et seq., 1-922, 1-925. *Van Voorhis v. District of Columbia*, 236 F. Supp. 978, 1965 U.S. Dist. LEXIS 6209 (D.D.C.1965), reversed by 240 F. Supp. 822, 1965 U.S. Dist. LEXIS 7005, 9 Fed. R. Serv. 2d (Callaghan) 12h.22, 1 (D.D.C. 1965).

Retrospective application of the District of Columbia Employee Non-Liability Act to action by motorist and her husband against District of Columbia for injuries sustained by motorist in collision with fire department truck of District of Columbia and for loss of consortium does not deprive motorist and her husband of vested right and does not result in unconstitutionality since cause of action of motorist and her husband is not against driver of fire truck but against District of Columbia. D.C. Code 1961, §§ 1-921 et seq., 1-922, 1-925. *Van Voorhis v. District of Columbia*, 236 F. Supp. 978, 1965

U.S. Dist. LEXIS 6209 (D.D.C.1965), reversed by 240 F. Supp. 822, 1965 U.S. Dist. LEXIS 7005, 9 Fed. R. Serv. 2d (Callaghan) 12h.22, 1 (D.D.C. 1965).

Statute providing immunity for less than gross negligence in case of claim arising out of operation of emergency vehicle on emergency run would be construed to encompass entire chase by police officer of car after it sideswiped another vehicle. D.C. Code 1981, § 1-1212. *Abney v. District of Columbia*, 580 A.2d 1036, 1990 D.C. App. LEXIS 243 (1990).

Statute providing immunity from liability for less than gross negligence in case of claim arising out of operation of emergency vehicle on emergency run encompassed decision by police officer to pursue car after it sideswiped another vehicle, not only pursuit itself. D.C. Code 1981, § 1-1212. *Abney v. District of Columbia*, 580 A.2d 1036, 1990 D.C. App. LEXIS 243 (1990).

District of Columbia Employee Non-Liability Act which provides for waiver of governmental immunity and makes District of Columbia liable, in case of an emergency vehicle, only for gross negligence, had no application to accident involving police vehicle which occurred some five months prior to enactment of statute. D.C. Code 1961, § 1-921 et seq. *Gibbs v. District of Columbia*, 180 A.2d 891, 1962 D.C. App. LEXIS 301 (Cr.App. 1962).

Governmental immunity.

Under District of Columbia law, provision of statute which restricts District's right to assert defense of governmental immunity and which states that in case of claim arising out of operation of emergency vehicle District is liable only for gross negligence is best read as nothing more than qualification to general waiver of governmental immunity expressed in statute. D.C. Code 1981, § 1-1212. *Hetzel v. United States*, 43 F.3d 1500, 1995 U.S. App. LEXIS 546 (C.A.D.C. 1995).

Defense of governmental immunity was effective bar to suit brought against District of Columbia before effective date of District of Columbia Employee Non-Liability Act for injuries sustained by driver of automobile as result of intersectional collision with fire truck responding to fire alarm and for loss of consortium of driver. D.C. Code 1961, § 1-921 et seq. *Van Voorhis v. District of Columbia*, 240 F. Supp. 822, 1965 U.S. Dist. LEXIS 7005 (D.D.C.1965).

Police officer who was pursuing motorist genuinely believed he should pursue fleeing motorist expeditiously, and thus officer was on an "emergency run" for which District of Columbia would be liable only for gross negligence; although officer denied "chasing" motorist, officer observed youthful motorist driving erratically, motorist fled when officer attempted to pull him over, and officer testified that it was an emer-

agency that he follow motorist because motorist was driving recklessly. *Duggan v. District of Columbia*, 884 A.2d 661, 2005 D.C. App. LEXIS 516 (2005).

Police department's General Order, which provided that all emergency vehicles should stop before proceeding through red lights, was merely an operating manual and did not implicate the District's waiver of governmental immunity with regard to motor vehicle accidents. D.C. Code 1981, § 1-1212. *District of Columbia v. Henderson*, 710 A.2d 874, 1998 D.C. App. LEXIS 88 (1998).

Gross negligence.

— Emergency run, gross negligence.

Even if a police officer testifies that he did not believe that he was on an emergency run, his actions legally may demonstrate in fact that he believed it necessary to proceed expeditiously in pursuit of a driver, such that the officer was on an emergency run and his or her conduct enjoys the statutory protection against claims for ordinary negligence. *District of Columbia v. Chambers*, 965 A.2d 5, 2009 D.C. App. LEXIS 30 (2009).

So long as circumstances lead an operator of an emergency vehicle to believe that a supposed emergency requires the action, the operator is on an emergency run and his or her conduct enjoys the statutory protection against claims for ordinary negligence; there is no requirement that the circumstances be reasonable or justifiable. *District of Columbia v. Chambers*, 965 A.2d 5, 2009 D.C. App. LEXIS 30 (2009).

District of Columbia police officer was engaged in an emergency run at the time that a vehicle that she was pursuing, which was driven by a juvenile, collided with a motorist's van, and thus the District was immune from liability for the motorist's injuries unless the officer was grossly negligent; officer was proceeding expeditiously in a District-owned police car in response to the juvenile's increased and high rates of speed, his failure to halt at stop signs, and his reckless driving, and the officer followed the juvenile, concluded that she needed to stop him, and increased her speed and ultimately activated her emergency lights and siren to accomplish her mission of stopping him because of his recklessness. *District of Columbia v. Chambers*, 965 A.2d 5, 2009 D.C. App. LEXIS 30 (2009).

— Emergency vehicle, gross negligence.

For purposes of determination as to whether operator of emergency vehicle was on an "emergency run," such that District of Columbia would be liable only for gross negligence, operator's subjective belief that a supposed emergency requires expeditious movement need not be reasonable. *Duggan v. District of Columbia*,

884 A.2d 661, 2005 D.C. App. LEXIS 516 (2005).

District of Columbia fire department's policy decision, which dictated circumstances in which its ambulance operators must respond with emergency run, spoke to the statutory provision that the agency may determine when ambulance is on emergency run for purposes of statute providing that District is liable only for gross negligence in case of claim arising out of operation of emergency vehicle on emergency run. D.C. Code §§ 1-1211(4), 1-1212. *Browner v. District of Columbia*, 756 A.2d 927, 2000 D.C. App. LEXIS 184 (2000).

Definition of "emergency vehicle" should not have been limited to police car which had both overhead lights and siren activated, for purposes of statute limiting liability to gross negligence for claim arising out of operation of emergency vehicle on emergency run, notwithstanding police department's general order defining emergency vehicle as departmental vehicle equipped with and actually operating various listed warning devices. D.C. Code 1981, § 1-1212. *Abney v. District of Columbia*, 580 A.2d 1036, 1990 D.C. App. LEXIS 243 (1990).

To permit a jury to find the District of Columbia liable for negligent training in connection with the operation of an emergency vehicle on an emergency run on an ordinary negligence standard without a showing that someone acting for the District was grossly negligent would eviscerate the substantive requirements of this section. *Hawkins v. District of Columbia*, 124 WLR 1125 (Super. Ct. 1996).

— In General.

"Gross negligence" includes conduct so extreme as to connote some sort of bad faith, for purposes of principle that District of Columbia cannot be held liable for claims arising out of the operation of a police car on an emergency run unless the officer driving the car acted with gross negligence. *District of Columbia v. Hawkins*, 782 A.2d 293, 2001 D.C. App. LEXIS 216 (2001).

When evidence of the actor's subjective bad faith is not present, the extreme nature of the conduct may be shown by demonstrating that the actor acted in disregard of a risk so obvious that the actor must be taken to be aware of it and so great as to make it highly probable that harm would follow, for purposes of determining whether gross negligence existed, such that District of Columbia was liable for claims arising out of the operation of a police car on an emergency run. *District of Columbia v. Hawkins*, 782 A.2d 293, 2001 D.C. App. LEXIS 216 (2001).

Among the factors which courts consider in determining whether the conduct of a person involved in a police chase amounts to gross negligence, such that District of Columbia is

liable for claims arising out of operation of police car on emergency run, are: (1) the length of the chase; (2) the type of neighborhood; (3) the characteristics of the street or roadways; (4) the presence of vehicular or pedestrian traffic; (5) weather conditions and visibility; and (6) the seriousness of the offense for which the police are pursuing the offender. *District of Columbia v. Hawkins*, 782 A.2d 293, 2001 D.C. App. LEXIS 216 (2001).

In claim arising out of operation of police vehicle in emergency pursuit, trial court incorrectly instructed jury that District of Columbia could be liable on negligent supervision theory even if no representative of District was found to be grossly negligent; *Employee Non-Liability Act* limited District's liability in pursuit cases to those situations in which gross negligence occurred. D.C. Code 1981, § 1-1212. *District of Columbia v. Banks*, 646 A.2d 972, 1994 D.C. App. LEXIS 137 (1994).

— Police training, gross negligence.

Police officer genuinely believed that he was responding to emergency at time of collision with motorist's vehicle, and thus, District of Columbia was liable only if officer was grossly negligent; officer was responding to traffic stop involving more than one person, and officer had been trained to respond expeditiously in such cases. *Dickson v. District of Columbia*, 938 A.2d 688, 2007 D.C. App. LEXIS 697 (2007).

Claim that District of Columbia had negligently trained police officers who became involved in high-speed chase, which was brought after oncoming motorist was fatally injured in head-on collision with pursued motorist, arose out of operation of emergency vehicle on emergency run and was governed by provision of *Employee Nonliability Act* which imposes liability in such situations only upon showing of gross negligence, and thus, gross negligence standard, and not that of ordinary negligence, was applicable to action. D.C. Code 1981, § 1-1212. *District of Columbia v. Walker*, 689 A.2d 40, 1997 D.C. App. LEXIS 19 (1997).

District of Columbia could not be found to have been grossly negligent in its training of police officers who engaged in high-speed pursuit, and thus could not be held liable under *Employee Nonliability Act* for injuries suffered as result of pursuit under theory of negligent training, where conduct of officers who engaged in pursuit at most rose to level of negligence. D.C. Code 1981, § 1-1212. *District of Columbia v. Walker*, 689 A.2d 40, 1997 D.C. App. LEXIS 19 (1997).

— Police vehicle, gross negligence.

Police officer did not act with gross negligence at time of collision with motorist's vehicle at intersection while responding to call for assistance with traffic stop, as required for

District of Columbia to be liable for officer's actions; officer was traveling 30 mph through intersection, which was only five mph over speed limit, officer had turned on emergency lights, and he was manually turning siren on and off so that he could alert other drivers but at same time hear police transmissions and other traffic. *Dickson v. District of Columbia*, 938 A.2d 688, 2007 D.C. App. LEXIS 697 (2007).

When evidence of subjective bad faith is not present, the "gross negligence" of the operator of a police car on an emergency run, as basis for District's liability for personal injury or death, may be shown by demonstrating that the operator acted in disregard of a risk so obvious that the operator must be taken to be aware of it and so great as to make it highly probable that harm would follow. *Duggan v. District of Columbia*, 783 A.2d 563, 2001 D.C. App. LEXIS 220 (2001), vacated by 797 A.2d 1233, 2002 D.C. App. LEXIS 103 (D.C. 2002), superseded by, remanded by 884 A.2d 661, 2005 D.C. App. LEXIS 516 (D.C. 2005).

Among the factors which courts consider in determining whether the conduct of a person involved in a police chase amounts to "gross negligence," as basis for District's liability for personal injury or death during an emergency run, are: (1) the length of the chase; (2) the type of neighborhood; (3) the characteristics of the street or roadways; (4) the presence of vehicular or pedestrian traffic; (5) weather conditions and visibility; and (6) the seriousness of the offense for which the police are pursuing the offender. *Duggan v. District of Columbia*, 783 A.2d 563, 2001 D.C. App. LEXIS 220 (2001), vacated by 797 A.2d 1233, 2002 D.C. App. LEXIS 103 (D.C. 2002), superseded by, remanded by 884 A.2d 661, 2005 D.C. App. LEXIS 516 (D.C. 2005).

In determining whether the conduct of a person involved in a police chase amounts to gross negligence, such that District of Columbia is liable for claims arising out of operation of police car on emergency run, primary focus must be not upon the conduct in all its aspects, but, rather, upon that particular conduct that might be said temporally and spatially to have proximately caused the collision. *District of Columbia v. Hawkins*, 782 A.2d 293, 2001 D.C. App. LEXIS 216 (2001).

Officers' conduct during high speed police chase met the gross negligence standard, such that District of Columbia was responsible for claims brought by estates of passenger and driver who were killed when their vehicle was struck by the operator of another vehicle who was being pursued in high speed chase by police; police chase occurred in residential area, officers involved in chase were familiar with the conditions of the neighborhood, and chase and ensuing fatal accident involving passenger and

driver happened during rush hour, at a busy intersection. *District of Columbia v. Hawkins*, 782 A.2d 293, 2001 D.C. App. LEXIS 216 (2001).

In the course of a vehicle pursuit to apprehend a criminal offender, a police officer may exceed the speed limit and ignore traffic lights; however, in doing so, the officer may not exceed rational bounds or act with gross negligence without being subject to liability. *District of Columbia v. Hawkins*, 782 A.2d 293, 2001 D.C. App. LEXIS 216 (2001).

District of Columbia cannot be held liable for claims arising out of the operation of a police car on an emergency run unless the officer driving the car acted with gross negligence. *District of Columbia v. Hawkins*, 782 A.2d 293, 2001 D.C. App. LEXIS 216 (2001).

Appropriate inquiry is whether, given the balance of the factors in case, a reasonable juror could conclude that the conduct of the police officers so grossly deviated from the conduct required under the circumstances as to support a finding of wanton, willful and reckless disregard or conscious indifference for the rights and safety of others so as to hold District of Columbia liable for claims arising out of operation of police car on emergency run. *District of Columbia v. Hawkins*, 782 A.2d 293, 2001 D.C. App. LEXIS 216 (2001).

Conduct of police officers in responding to emergency call did not rise to level of gross negligence, and thus, District could not be held liable under statute limiting District's waiver of immunity in action brought by motorist whose vehicle was "totalled" in collision with police cruisers as they ran a red light, at only five or ten miles above speed limit and with emergency lights blinking and sirens blaring. D.C. Code 1981, § 1-1212. *District of Columbia v. Henderson*, 710 A.2d 874, 1998 D.C. App. LEXIS 88 (1998).

Conduct of police officers in engaging in high-speed chase of motorist who appeared to be underage and was driving stolen vehicle did not rise to level of gross negligence, and thus, District could not be held liable under Employee Nonliability Act in action brought after driver of oncoming vehicle was killed in collision with pursued vehicle; officers were faced with driver proceeding down divided limited access highway at high rate of speed where vehicular traffic was light, there were no pedestrians, and conditions were clear and dry. D.C. Code 1981, § 1-1212. *District of Columbia v. Walker*, 689 A.2d 40, 1997 D.C. App. LEXIS 19 (1997).

— Standard of care, gross negligence.

Standard of care to which federal government was held in action under Federal Tort Claims Act (FTCA) brought by motorists injured in collision with federal law enforcement

officers who were involved in high speed chase in District of Columbia was standard of due care required of all vehicles operating in District of Columbia, even though under District of Columbia statute governmental immunity of District is waived for claims arising from use of vehicles by government employees only upon showing of gross negligence and as result United States is liable for conduct for which District of Columbia is immune. 18 U.S.C. §§ 1346(b), 2674; D.C. Code 1981, § 1-1212. *Hetzel v. United States*, 43 F.3d 1500, 1995 U.S. App. LEXIS 546 (C.A.D.C. 1995).

"Gross negligence" of the operator of a police car on an emergency run, as basis for District's liability for personal injury or death, means such an extreme deviation from the ordinary standard of care as to support a finding of wanton, willful, and reckless disregard or conscious indifference for the rights and safety of others, and it includes conduct so extreme as to connote some sort of bad faith. *Duggan v. District of Columbia*, 783 A.2d 563, 2001 D.C. App. LEXIS 220 (2001), vacated by 797 A.2d 1233, 2002 D.C. App. LEXIS 103 (D.C. 2002), superseded by, remanded by 884 A.2d 661, 2005 D.C. App. LEXIS 516 (D.C. 2005).

Evidence that streets were slippery and wet from rain and leaves, that young people from seven schools in the area were being dismissed for the day, that pursuing officer was familiar with police department internal operating manual that prohibited pursuits to effect a traffic stop, that pursued motorist had exhibited signs of being a young inexperienced driver who was having problems in controlling his vehicle, and that the four-block chase involved speeds 30 miles per hour over the 25 miles per hour posted speed limit, created issue for jury regarding gross negligence of pursuing officer during emergency run, as basis for District's liability for personal injuries sustained by passenger of vehicle which was struck by the pursued vehicle. *Duggan v. District of Columbia*, 783 A.2d 563, 2001 D.C. App. LEXIS 220 (2001), vacated by 797 A.2d 1233, 2002 D.C. App. LEXIS 103 (D.C. 2002), superseded by, remanded by 884 A.2d 661, 2005 D.C. App. LEXIS 516 (D.C. 2005).

Pursuing officer's violation of police department's internal operating manual that prohibited pursuits to effect a traffic stop was a factor that could be considered when determining whether officer was grossly negligent during emergency run, as basis for District's statutory liability for personal injuries sustained by passenger of vehicle which was struck by the pursued vehicle, but the manual could not expand the District's liability beyond what was authorized in the statute. *Duggan v. District of Columbia*, 783 A.2d 563, 2001 D.C. App. LEXIS 220 (2001), vacated by 797 A.2d 1233, 2002 D.C. App. LEXIS 103 (D.C. 2002), superseded

by, remanded by 884 A.2d 661, 2005 D.C. App. LEXIS 516 (D.C. 2005).

Term "gross negligence" as used in statutory provision under which District is liable on claim arising from operation of emergency vehicle only for gross negligence, requires such an extreme deviation from ordinary standard of care as to support finding of wanton, willful, and reckless disregard or conscious indifference for rights and safety of others; standard requires conduct so extreme as to imply some sort of bad faith, and where there is no evidence of subjective bad faith, extreme nature of conduct may be shown by demonstrating that actor acted in disregard of risk so obvious that actor must be taken to be aware of it and so great as to make it highly probable that harm would follow. D.C. Code 1981, § 1-1212. *District of Columbia v. Henderson*, 710 A.2d 874, 1998 D.C. App. LEXIS 88 (1998).

Term "gross negligence," as used in provision of Employee Nonliability Act under which District is liable on claim arising from operation of emergency vehicle only for gross negligence, requires such an extreme deviation from ordinary standard of care as to support finding of wanton, willful, and reckless disregard or conscious indifference for rights and safety of others; standard requires conduct so extreme as to imply some sort of bad faith, and where there is no evidence of subjective bad faith, extreme nature of conduct may be shown by demonstrating that actor acted in disregard of risk so obvious that actor must be taken to be aware of it and so great as to make it highly probable that harm would follow. D.C. Code 1981, § 1-1212. *District of Columbia v. Walker*, 689 A.2d 40, 1997 D.C. App. LEXIS 19 (1997).

Jury instructions.

No plain error or miscarriage of justice occurred when trial court incorrectly instructed jury that District of Columbia could be liable on negligent supervision theory even if no representative of District was found to be grossly negligent; District never objected to instruction or expressed dissatisfaction with it, and, in its proposed verdict form, District effectively invited trial court to treat negligent supervision as requiring only ordinary negligence. D.C. Code 1981, § 1-1212; Civil Rule 51. *District of Columbia v. Banks*, 646 A.2d 972, 1994 D.C. App. LEXIS 137 (1994).

Public duty doctrine.

Under the "public duty doctrine" a government and its agents owe no general duty to provide public services, such as police protection, to particular citizens as individuals. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

To establish a special relationship within the meaning of the public duty doctrine, affirmative

negligence is required, as opposed to inaction or futile action. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

Mother of murder victim failed to show that victim justifiably relied on police for protection in connection with his alleged role as informant, and thus, public duty doctrine precluded mother's recovery in wrongful death and survival action against District; affidavits submitted by mother and her other son revealed that neither was aware of victim's alleged role as informant, it was likely that they would have been told if police had promised to provide protection, neither mother's affidavit nor that of victim's friend mentioned any promise made by police to protect victim and his family, and record excerpts from detective's deposition did not mention any promise of protection. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

For purposes of the public duty doctrine, more than general reliance is needed to require the police to act on behalf of a particular individual; rather, the plaintiff must specifically act, or refrain from acting, in such a way as to exhibit particular reliance upon the actions of the police in providing personal protection. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

The public duty doctrine provides that absent some "special relationship" between the government and the individual, the District's duty is to provide public services to the public at large. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

For purposes of the public duty doctrine, the general duty owed to the public may become a specific duty owed to an individual if the police and the individual are in a special relationship different from that existing between the police and citizens generally. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

For purposes of the public duty doctrine, a special duty or special relationship may be established by a statute that prescribes mandatory acts clearly for the protection of a particular class of persons rather than the public as a whole. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

To show a direct or continuing contact between an injured person and a governmental agency or official, for purposes of establishing a special relationship within the meaning of the public duty doctrine, the contact must be a direct transaction with the party injured or an arms-length relationship in which the city's agent is dealing directly, in some form, with the person injured, and the government must engage in an affirmative undertaking of protection on which the victim justifiably relies. *Taylor v. District of Columbia*, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

Public duty doctrine did not bar injured motorist's suit against District of Columbia based on police officer's pursuit of second motorist and supervision of pursuit by second officer; if public duty doctrine barred such claim, statute providing that District would be liable to persons injured in pursuit of fleeing wrongdoer where injury was result of District's gross negligence would be nullified. D.C. Code 1981, § 1-1212. District of Columbia v. Banks, 646 A.2d 972, 1994 D.C. App. LEXIS 137 (1994).

The public duty doctrine does not apply where the issue is whether a police officer conducting a vehicular chase in a densely populated area was grossly negligent. Banks v. District of Columbia, 120 WLR 1605 (Super. Ct. 1992).

Questions for court.

Interpretation of gross negligence standard of Employee Nonliability Act, under which District is liable on claim arising from operation of emergency vehicle only for gross negligence, is question of law for court. D.C. Code 1981, § 1-1212. District of Columbia v. Walker, 689 A.2d 40, 1997 D.C. App. LEXIS 19 (1997).

Questions for jury.

Generally, whether conduct constitutes gross negligence is a question of fact for a jury to determine. Duggan v. District of Columbia, 783 A.2d 563, 2001 D.C. App. LEXIS 220 (2001), vacated by 797 A.2d 1233, 2002 D.C. App. LEXIS 103 (D.C. 2002), superseded by, remanded by 884 A.2d 661, 2005 D.C. App. LEXIS 516 (D.C. 2005).

Pursuing officer's testimony that he was not on an emergency run, and evidence that officer's pursuit of vehicle violated police department's internal operating manual that prohibited pursuits to effect a traffic stop, created issue for jury as to whether officer was not on an emergency run, so that ordinary negligence rather than gross negligence would be required to hold District liable for personal injuries sustained by passenger of vehicle that was struck by pursued motorist's vehicle. Duggan v. District of Columbia, 783 A.2d 563, 2001 D.C. App. LEXIS 220 (2001), vacated by 797 A.2d 1233, 2002 D.C. App. LEXIS 103 (D.C. 2002), superseded by, remanded by 884 A.2d 661, 2005 D.C. App. LEXIS 516 (D.C. 2005).

What constitutes an emergency run, within meaning of statute requiring showing of gross

negligence of operator of police car on an emergency run in order for District to be liable for personal injury or death, may depend on factual disputes which must be resolved by a jury. Duggan v. District of Columbia, 783 A.2d 563, 2001 D.C. App. LEXIS 220 (2001), vacated by 797 A.2d 1233, 2002 D.C. App. LEXIS 103 (D.C. 2002), superseded by, remanded by 884 A.2d 661, 2005 D.C. App. LEXIS 516 (D.C. 2005).

Review.

When reviewing a challenge regarding the sufficiency of evidence of claims alleging gross negligence of the operator of a police car on an emergency run, the appropriate inquiry is whether, given the balance of factors, a reasonable juror could conclude that the conduct of the operator so grossly deviated from the conduct required under the circumstances as to support a finding of wanton, willful, and reckless disregard or conscious indifference for the rights and safety of others. Duggan v. District of Columbia, 783 A.2d 563, 2001 D.C. App. LEXIS 220 (2001), vacated by 797 A.2d 1233, 2002 D.C. App. LEXIS 103 (D.C. 2002), superseded by, remanded by 884 A.2d 661, 2005 D.C. App. LEXIS 516 (D.C. 2005).

Sufficiency of evidence.

Evidence that police supervisor was negligent in failing to stop police pursuit of fleeing motorist driving allegedly stolen automobile was sufficient for submission to jury; supervisor knew that fleeing motorist was suspected of property offense rather than crime against the person, jury could have found that chase was conducted at high speed through residential areas, and there was evidence that fleeing motorist drove recklessly and at high speeds only when he knew officers were pursuing him. D.C. Code 1981, § 1-1212. District of Columbia v. Banks, 646 A.2d 972, 1994 D.C. App. LEXIS 137 (1994).

Validity.

Statute immunizing District of Columbia policemen from liability for acts performed within the scope of their employment and providing instead an action against the District, but limiting the liability of the District for acts committed in emergency vehicles during emergency runs to acts of gross negligence, constituted a reasonable exercise of police power. Act July 14, 1960, 74 Stat. 519; U.S. Const. Amend. 5. Rohrlack v. Goff, 197 F.Supp. 670, 1961 U.S. Dist. LEXIS 3492 (D.D.C.1961).

§ 2-413. Action against employee barred by judgment against District; notice of claim; administrative disposition of claim as evidence.

The judgment in any such action shall constitute a complete bar to any action by the claimant by reason of the same subject matter against the

employee of the District whose act or omission gave rise to the claim. No suit shall be instituted involving any claim described in § 2-412 unless the claimant shall have first given notice to the District in accordance with § 12-309 and shall have presented to the District in writing a claim for money damages in connection therewith, and the District has had 6 months from the date of such filing within which to make final disposition of such claim. The administrative disposition of a claim by the District shall not be competent evidence of liability or amount of damages in proceedings on any such claim.

(July 14, 1960, 74 Stat. 519, Pub. L. 86-654, § 4.)

Section references. — This section is referred to in § 1-319.03.

Prior Codifications. — 1981 Ed., § 1-1213. 1973 Ed., § 1-923.

§ 2-414. Excessive verdicts.

In any case involving any claim described in § 2-412 in which the trial court shall consider the verdict excessive, the court may order a remittitur of so much of the amount of such verdict or judgment, as the case may be, as it considers excessive, and either permit the party in whose favor the verdict was rendered or the party recovering such judgment, as the case may be, to file a remittitur.

(July 14, 1960, 74 Stat. 520, Pub. L. 86-654, § 5.)

Section references. — This section is referred to in § 1-319.03.

Prior Codifications. — 1981 Ed., § 1-1214. 1973 Ed., § 1-924.

§ 2-415. Actions against District employees for negligent operation of vehicles barred; indemnification of medical employees; disciplinary actions.

(a) After the effective date of this subchapter, no civil action or proceeding shall be brought or be maintained against an employee of the District for loss of or damage to property or for personal injury, including death, resulting from the operation by such employee of any vehicle if it be alleged in the complaint or developed in a later stage of the proceeding that the employee was acting within the scope of his office or employment, unless the District shall, in an action brought against it for such damage or injury, including death, specifically deny liability on the ground that the employee was not, at the time and place alleged, acting within the scope of his office or employment. If in any such civil action or proceeding pending in a court in the District of Columbia as of the effective date of this subchapter the District has not been named as a defendant, said District shall be joined as a defendant and after its answer has been filed and subject to the provisions of the preceding sentence, the action shall be dismissed as to the employee and the case shall proceed as if the District had been a party defendant from the inception thereof.

(b) Whenever in a case in which the District of Columbia is not a party, a final judgment and order to pay money damages is entered against a medical employee of the District of Columbia on account of damage to or loss of

property or on account of personal injury or death caused by the negligent act or omission of the medical employee within the scope of his employment and performance of professional responsibilities, the District of Columbia shall, to the extent the medical employee is not covered by appropriate insurance purchased by the District of Columbia, indemnify the employee in the amount of said money damages.

(b-1) The District of Columbia shall defend and indemnify members of the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings, established by § 2-1831.06, from claims and suits in law or equity arising from acts or omissions in the course and scope of their official duties, other than willful or bad faith misconduct.

(c) Nothing in this section shall be construed to restrict appropriate disciplinary action by the District of Columbia against any employee for a negligent act or omission.

(July 14, 1960, 74 Stat. 520, Pub. L. 86-654, § 6; Mar. 26, 1976, D.C. Law 1-59, § 3, 22 DCR 5473; Dec. 7, 2004, D.C. Law 15-217, § 2, 51 DCR 9126.)

Section references. — This section is referred to in §§ 1-319.03 and 2-1831.06.

Prior Codifications. — 1981 Ed., § 1-1215. 1973 Ed., § 1-925.

Effect of amendments. — D.C. Law 15-217 added subsec. (b-1).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the Commission on Selection and Tenure of Administrative Law Judges Non-Liability Temporary Amendment Act of 2004 (D.C. Law 15-169, June 19, 2004, law notification 51 DCR 7334).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of District of Columbia Employee Non-Liability and Notice of Claim Clarification Emergency Amendment Act of 2002 (D.C. Act 14-499, October 23, 2002, 49 DCR 10022).

For temporary (90 day) amendment of section, see § 2 of Commission on Selection and Tenure of Administrative Law Judges Non-Liability Emergency Amendment Act of 2004

(D.C. Act 15-389, March 18, 2004, 51 DCR 3387).

For temporary (90 day) amendment of section, see § 2 of Commission on Selection and Tenure of Administrative Law Judges Non-Liability Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-444, June 23, 2004, 51 DCR 6556).

Legislative history of Law 1-59. — For legislative history of D.C. Law 1-59, see Historical and Statutory Notes following § 2-411.

Legislative history of Law 15-217. — Law 15-217, the “Office of Administrative Hearings Establishment Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-817, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 29, 2004, and July 13, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-522 and transmitted to both Houses of Congress for its review. D.C. Law 15-217 became effective on December 7, 2004.

CASE NOTES

ANALYSIS

Equitable estoppel.
In general.
Notice.
Summary judgment.

Equitable estoppel.

District of Columbia employee who allegedly implied that he was federal employee was not equitably estopped from claiming that he was District employee, and as such entitled to im-

munity in motorist's action against him to recover damages she sustained when employee drove vehicle owned by the United States or General Services Administration (GSA) and leased to District into motorist's vehicle, although motorist filed claim against federal defendants under the Federal Tort Claims Act rather than timely claim against District, where employee had not made any misrepresentations about his employer; employee truthfully stated in accident report that vehicle was

owned by GSA. *Perkins v. United States*, 183 F.Supp.2d 69, 2002 U.S. Dist. LEXIS 1544 (2002).

In general.

Under D.C. Employees Non-Liability Act passenger-schoolteacher who was riding with driver-schoolteacher to meeting at time of collision resulting from driver-schoolteacher's negligence was precluded from bringing action against driver-schoolteacher even though under Federal Employees' Compensation Act she was only barred from bringing action against school district. D.C. Code § 1-925; 5 U.S.C. §§ 8101(1)(D), 8116(c), 8132. *Davis v. Harrod*, 407 F.2d 1280, 1969 U.S. App. LEXIS 9122 (C.A.D.C. 1969).

The District of Columbia Employee Non-Liability Act applies retroactively as well as prospectively, where it provides that if action against employee of District of Columbia for personal injury or property damage is pending as of effective date of act and the District of Columbia has not been named as defendant, the District of Columbia should be joined as defendant and action should be dismissed as to employee. D.C. Code 1961, §§ 1-921 et seq., 1-922, 1-925. *Van Voorhis v. District of Columbia*, 236 F. Supp. 978, 1965 U.S. Dist. LEXIS 6209 (D.D.C.1965), reversed by 240 F. Supp. 822, 1965 U.S. Dist. LEXIS 7005, 9 Fed. R. Serv. 2d (Callaghan) 12h.22, 1 (D.D.C. 1965).

Retroactive application of the District of Columbia Employee Non-Liability Act to action by motorist and her husband against District of Columbia for injuries sustained by motorist in collision with fire department truck of District of Columbia and for loss of consortium does not deprive motorist and her husband of vested right and does not result in unconstitutionality since cause of action of motorist and her husband is not against driver of fire truck but against District of Columbia. D.C. Code 1961, §§ 1-921 et seq., 1-922, 1-925. *Van Voorhis v. District of Columbia*, 236 F. Supp. 978, 1965

U.S. Dist. LEXIS 6209 (D.D.C.1965), reversed by 240 F. Supp. 822, 1965 U.S. Dist. LEXIS 7005, 9 Fed. R. Serv. 2d (Callaghan) 12h.22, 1 (D.D.C. 1965).

Under District of Columbia Code barring civil action against employee of District of Columbia for injuries resulting from operation by employee of vehicle within scope of his employment, action could not be maintained against District of Columbia metropolitan police officer whose negligence while operating his own automobile on assignment as member of canine corps resulted in injury to passenger in his vehicle. D.C. Code 1961, §§ 1-922, 1-925. *Weaver v. Irani*, 222 A.2d 846, 1966 D.C. App. LEXIS 229 (App. 1966).

Notice.

Patient was not required to give notice to the District of Columbia before bringing medical malpractice suit against physician in his individual capacity, even though the District was required to indemnify him as a medical employee. *George v. Dade*, 769 A.2d 760, 2001 D.C. App. LEXIS 77 (2001).

When the District of Columbia must indemnify a medical employee sued in his individual capacity for medical negligence committed within the scope of his employment, the complainant is not required to give notice of the claim to the District within six months after the injury or damage was sustained. *George v. Dade*, 769 A.2d 760, 2001 D.C. App. LEXIS 77 (2001).

Summary judgment.

Summary judgment affidavit of driver of vehicle leased to District of Columbia was sufficient to show he was acting within scope of his employment for District when he hit motorist's vehicle, and thus driver had immunity from motorist's action to recover damages for injuries sustained in collision, where motorist failed to present countervailing summary judgment affidavit. *Perkins v. United States*, 183 F.Supp.2d 69, 2002 U.S. Dist. LEXIS 1544 (2002).

§ 2-416. Liability of employee to District for negligent damage to its property.

Nothing in this subchapter shall be construed so as to relieve any District employee from liability to the District for negligent damage to or loss of District property.

(July 14, 1960, 74 Stat. 520, Pub. L. 86-654, § 7.)

Section references. — This section is referred to in § 1-319.03.

Prior Codifications. — 1981 Ed., § 1-1216. 1973 Ed., § 1-926.

Subchapter III. Unjust Imprisonment.

§ 2-421. Right to present claim.

Any person unjustly convicted of and subsequently imprisoned for a criminal offense contained in the District of Columbia Official Code may present a claim for damages against the District of Columbia.

(Mar. 5, 1981, D.C. Law 3-143, § 2, 27 DCR 4656.)

Section references. — This section is referred to in § 2-422.

Prior Codifications. — 1981 Ed., § 1-1221.

Legislative history of Law 3-143. — Law 3-143, the District of Columbia Unjust Imprison Act of 1980, was introduced in Council and assigned Bill No. 3-251, which was referred

to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 29, 1980 and September 16, 1980, respectively. Signed by the Mayor on October 14, 1980, it was assigned Act No. 3-264 and transmitted to both Houses of Congress for its review.

CASE NOTES

Defense.

It was not appropriate to strike defendants' defense, in response to plaintiff's claim that defendants unjustly imprisoned him in connection with wrongful conviction for rape and murder, that plaintiff might have failed to fully comply with mandatory notice requirements of

District of Columbia law, as defendants were permitted to say in answer that they lacked knowledge or information sufficient to form belief about truth of plaintiff's allegation. *Gates v. District of Columbia*, 825 F.Supp.2d 168, 2011 U.S. Dist. LEXIS 133146 (2011).

§ 2-422. Proof required.

Any person bringing suit under § 2-421 must allege and prove:

(1) That his conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted, or on new trial or rehearing was found not guilty of such offense, as appears from the record or certificate of the court setting aside or reversing such conviction, or that he has been pardoned upon the stated ground of innocence and unjust conviction; and

(2) That, based upon clear and convincing evidence, he did not commit any of the acts charged or his acts or omissions in connection with such charge constituted no offense against the United States or the District of Columbia the maximum penalty for which would equal or exceed the imprisonment served and he did not, by his misconduct, cause or bring about his own prosecution.

(Mar. 5, 1981, D.C. Law 3-143, § 3, 27 DCR 4656.)

Section references. — This section is referred to in § 2-423.

Prior Codifications. — 1981 Ed., § 1-1222.

Legislative history of Law 3-143. — For legislative history of D.C. Law 3-143, see Historical and Statutory Notes following § 2-421.

§ 2-423. Damages.

Upon a finding by the judge of unjust imprisonment in accordance with the standards set by § 2-422, the judge may award damages. Punitive damages may not be awarded.

(Mar. 5, 1981, D.C. Law 3-143, § 4, 27 DCR 4656.)

Prior Codifications. — 1981 Ed., § 1-1223. legislative history of D.C. Law 3-143, see Historical and Statutory Notes following § 2-421.
Legislative history of Law 3-143. — For

§ 2-424. Application of subchapter — Date of release.

This subchapter shall apply to any person whose release from unjust imprisonment occurred on or after June 1, 1979: Provided, that the provisions of § 12-309 shall not apply to any cause of action for unjust imprisonment arising prior to the effective date of this subchapter.

(Mar. 5, 1981, D.C. Law 3-143, § 5, 27 DCR 4656.)

Prior Codifications. — 1981 Ed., § 1-1224. legislative history of D.C. Law 3-143, see Historical and Statutory Notes following § 2-421.
Legislative history of Law 3-143. — For

§ 2-425. Same — Entry of guilty plea.

This subchapter shall not apply to any person whose conviction resulted from his entering a plea of guilty unless that plea was pursuant to North Carolina v. Alford, 400 U.S. 25 (1970).

(Mar. 5, 1981, D.C. Law 3-143, § 6, 27 DCR 4656.)

Prior Codifications. — 1981 Ed., § 1-1225. legislative history of D.C. Law 3-143, see Historical and Statutory Notes following § 2-421.
Legislative history of Law 3-143. — For

Subchapter IV. Risk Management.

§ 2-431. Report by the Office of the City Administrator to the Council on risk management activities.

(a) For the purposes of this section, the term:

(1) “Actual losses sustained” means actual claims, judgements, or settlements paid by the District of Columbia government.

(2) “Administrative costs of risk management” means the actual cost of operating a risk management program.

(3) “Cost of funding losses” means the total cost incurred by the District of Columbia government on an annual basis for funding losses.

(4) “Cost of risk” means the costs of actual losses sustained, administrative costs of the risk management program, costs of funding losses, cost of risk control efforts and other outside service costs.

(5) “Outside service costs” means all funds expended by the District of Columbia government to external entities involved in risk management activities.

(6) “Risk management” means the process of making and implementing decisions to systematically preserve the physical, human, and financial resources of organizations, with the goals of minimizing the adverse effects of accidental losses on organizations and clarifying an organization’s understand-

ing of its exposure to risks, including loss of, or damage to, property; liability loss; interrupted revenue; and loss of personnel resources.

(b) On or before February 1 of each year, the Office of the City Administrator, or any successor agency which shall perform its risk management functions, shall provide a report to the Council delineating the savings realized by the District of Columbia as a result of implementing risk management plans and strategies. The report shall:

- (1) Be prepared on an agency-by-agency basis;
- (2) State the itemized cost of risk in the prior fiscal year;
- (3) State the changes in the total cost of risk realized in the prior fiscal year resulting from implementing risk management plans compared to the cost of risk in both the next preceding fiscal year and the baseline fiscal year 2004 (comparative cost of risk information for fiscal years 2002 and 2003 shall be used to the extent that is available); and

(4) Include all data, on an agency-by-agency basis, reported to the City Administrator by agencies on the Risk Management Council addressing risk within agencies and plans implemented to control those risks.

(Nov. 13, 2003, D.C. Law 15-39, § 2004, 50 DCR 5668.)

Emergency legislation. — For temporary (90 day) addition, see §§ 4 and 5 of Disability Compensation Program Transfer and Risk Management Emergency Amendment Act of 2003 (D.C. Act 15-88, May 19, 2003, 50 DCR 4330).

For temporary (90 day) addition, see §§ 4 and 5 of Disability Compensation Program Transfer and Risk Management Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-128, July 29, 2003, 50 DCR 6836).

For temporary (90 day) addition, see §§ 4 and 5 of Disability Compensation Program Transfer and Risk Management Second Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-172, October 6, 2003, 50 DCR 9173).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 2-311.03.

Editor's notes. — Section 2005 of Law 15-39 provided: "Limitation on number of full-time equivalent employees in fiscal year 2004. "In the performance of its risk management functions, the Office of the City Administrator, or any successor agency, which shall perform such functions shall not employ more than 23 full-time equivalent employees during fiscal year 2004; provided, that if funds become available, new positions created shall be filled first in the Disability Compensation Claims Bureau Unit (3 positions) and Risk Identification and Analysis Division (one position) as funds become available. For the purpose of this section, the term 'risk management' shall have the same meaning as in section 2004(a)(2)."

CHAPTER 5. ADMINISTRATIVE PROCEDURE.

Subchapter I. Administrative Procedure

Sec.

- 2-501. Effect of subchapter.
- 2-502. Definitions.
- 2-503. Establishment of procedures.
- 2-504. Official publications.
- 2-505. Public notice and participation in rulemaking; emergency rules.
- 2-506. [Repealed].
- 2-507. Compilation of rules and regulations.
- 2-508. Declaratory orders.
- 2-509. Contested cases.
- 2-510. Judicial review.
- 2-511. [Repealed].

Subchapter II. Freedom of Information

- 2-531. Public policy.
- 2-532. Right of access to public records; allowable costs; time limits.
- 2-533. Letters of denial.
- 2-534. Exemptions from disclosure.
- 2-535. Recording of final votes.
- 2-536. Information which must be made public.
- 2-537. Administrative appeals.
- 2-538. Oversight of disclosure activities.
- 2-539. Definitions.
- 2-540. Short title.

Subchapter III. Legal Publication

- 2-551. Definitions.
- 2-552. District of Columbia Municipal Regulations.
- 2-553. District of Columbia Register.

Sec.

- 2-554. Documents to be filed in the District of Columbia Office of Documents.
- 2-555. Permanent supplements to the District of Columbia Municipal Regulations.
- 2-556. Documents to be filed with Administrator.
- 2-557. Publication, specifications, and distribution of the District of Columbia Municipal Regulations.
- 2-558. Legal effectiveness of documents.
- 2-559. Correction of errors in documents.
- 2-560. Certification.
- 2-561. Presumption created by publication.
- 2-562. Penalties.

Subchapter IV. Open Meetings

- 2-571. Short title.
- 2-572. Statement of policy.
- 2-573. Rules of construction.
- 2-574. Definitions.
- 2-575. Open meetings.
- 2-576. Notice of meetings.
- 2-577. Meeting procedures.
- 2-578. Record of meetings.
- 2-579. Enforcement; authority.
- 2-580. Training.

Subchapter V. Open Government Office

- 2-591. Short title.
- 2-592. Establishment of the District of Columbia Open Government Office.
- 2-593. Powers and duties of the Open Government Office.
- 2-594. Director.

*Subchapter I. Administrative Procedure.***§ 2-501. Effect of subchapter.**

This subchapter shall supplement all other provisions of law establishing procedures to be observed by the Mayor and agencies of the District government in the application of laws administered by them, except that this subchapter shall supersede any such law and procedure to the extent of any conflict therewith.

(Oct. 21, 1968, 82 Stat. 1204, Pub. L. 90-614, § 2; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(a), 22 DCR 2048; Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), 23 DCR 9532b.)

Cross references. — District of Columbia Court of Appeals, jurisdiction to review administrative orders and decisions, see § 11-722.

Boxing and wrestling commission, powers, see § 3-606.

Boxing and wrestling commission, jurisdiction,

tion, see § 3-605.

Business improvement districts, hearings, see § 2-1215.06.

Business improvement districts, rulemaking, see § 2-1215.22.

Criminal justice supervisory board, rules governing operation, promulgation, see § 3-904.

Health and safety, civil infractions, hearing on notice of infraction, see § 2-1802.03.

Historic landmark and district protection, administrative review, see § 6-1112.

Housing Finance Agency, bonds and notes, issuance, see § 42-2704.02.

Litter control, hearing examiners, appointment and powers, see § 8-808.

Litter control administration, rules and regulations, see § 8-802.

Motor vehicles, international registration plan agreement, rules, see § 50-1507.07.

Motor vehicles, Public Parking Authority, revenue bonds, see § 50-2512.

Regional interstate banking, hearings, private sessions, see § 26-713.

Security and fire alarm systems, regulations, alarm dealers, licenses and permits, see § 7-2804.

Security and fire alarm systems, rules and regulations, saving clause, see § 7-2815.

Washington Convention Center Authority, duties of the Board of Directors, see § 10-1202.06.

Washington Convention Center Authority, power to issue bonds and notes, see § 10-1202.10.

Abandoned and junk vehicle removal, promulgation of rules and regulations, see § 50-2406.

Administrative Procedure Act defined, see § 2-1401.02.

Adult protective services, rules and regulations to be issued by Mayor, see § 7-1909.

Advisory neighborhood commissions, annual allocations, powers and duties of commission, rules to be issued by Mayor, see § 1-309.13.

Affirmative action requirements, development and promulgation of guidelines, compliance with Administrative Procedure Act, see § 2-1402.53.

AIDS and health care, rules and regulations to be issued by Mayor, see § 7-1606.

AIDS and HIV testing protocols, sexual offenders, promulgation of rules and regulations, see § 22-3903.

Air pollution control, promulgation of rules and regulations, see § 8-101.06.

Alternative fuels technology, promulgation of rules and regulations, see § 50-705.

Bicycles, fine and penalty schedule, see § 50-1634.

Bicycles, promulgation of rules and regulations, see § 50-1632.

Board of Elections and Ethics, authority to issue rules and regulations, compliance with Administrative Procedure Act, see § 1-1021.02.

Board of Elections and Ethics, powers and duties, hearings before 1 member panels, appeal, see § 1-1001.05.

Board of Real Property Assessments and Appeals, promulgation of administrative procedures, see § 47-825.01.

Board of Registration for Professional Engineers, appeal of adverse action, compliance with Administrative Procedure Act, see § 47-2886.09.

Boxing and wrestling commission, powers, see § 3-606.

Budget and financial management, rulemaking authority, mayor to issue implementing rules pursuant to Administrative Procedure Act, see § 47-351.16.

Building regulations, community development, acquisition and disposition of property, authority of Mayor, see § 6-1005.

Building regulations, construction codes, Mayor's authority to amend, see § 6-1409.

Bulk transfers, fees for filing, indexing, and certificates, fees to be adopted pursuant to Administrative Procedure Act, see § 28-6-109.

Check cashing services, cease and desist orders, hearing procedures, see § 26-321.

Check cashing services, suspension and revocation of licenses, hearing procedures, see § 26-316.

Child care services and facilities, proposed rules and regulations to be issued by Mayor, see § 7-2007.

Child development homes insurance, liability coverage levels, promulgation of rules and regulations, see § 31-4003.

Child Protection Register, authority to retain information required for research, planning, evaluation and management, adoption of applicable rules, see § 4-1302.02.

Child Protection Register, procedures for challenging information, adoption of rules, see § 4-1302.06.

Child support enforcement, promulgation of rules and regulations, see § 46-227.

Cigarettes, below-cost sales, promulgation of rules and regulations, see § 28-4527.

Clinical laboratories, suspension and revocation of licenses, hearing procedures, see § 44-212.

Collection and disbursement of taxes, rates to be charged for issuing certificates, assessments, and duplicate returns, notice of change of rates to be published in accordance with Administrative Procedure Act, see § 47-406.

Commercial motor vehicle driver licenses, disqualified persons, see § 50-406.

Commercial motor vehicle driver's licenses, promulgation of rules and regulations, see § 50-409.

Commission on Judicial Disabilities and Tenure, authority to make rules and regulations for commission's operations, application of certain selected provisions of Administrative Procedure Act, see § 11-1525.

Compulsory/no-fault motor vehicle insurance, policy cancellations, appeals, see § 31-2409.

Condominiums, judicial review of actions of mayor, to be subject to Administrative Procedure Act, "rule making" standard to apply, see § 42-1904.16.

Condominiums, rules and regulations to be adopted by mayor in accordance with Administrative Procedure Act, coverage of rules, see § 42-1904.12.

Consumer credit service organizations, promulgation of rules and regulations, see § 28-4608.

Dangerous dogs, proposed rules and regulations, procedures for review, see § 8-2035.

Dangerous dogs, rules and regulations, authority of Mayor, see § 8-1908.

Day care, contracts with licensed child devel-

opment centers, payment for services, see § 4-409.

Day care, payments to child development homes and to in-home caregivers, see § 4-410.

Prior Codifications. — 1981 Ed., § 1-1501. 1973 Ed., § 1-1501.

Legislative history of Law 1-19. — Law 1-19 was introduced in Council and assigned Bill No. 1-1, which was referred to the Committee of the Whole, the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on June 3, 1975 and June 20, 1975, respectively. Signed by the Mayor on July 10, 1975, it was assigned Act No. 1-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-96. — For legislative history of D.C. Law 1-96, see Historical and Statutory Notes following § 2-531.

Mayor's Orders. — D.C. Board of Appeals and Review established: See Mayor's Order 84-79, April 26, 1984, as amended by Mayor's Order 86-50, March 31, 1986.

CASE NOTES

ANALYSIS

Bias and prejudice.

Construction and application.

Construction with federal law.

Construction with other laws.

Due process.

Judicial review.

Other remedies.

Prisons and prison procedures.

Purposes and legislative intent.

Rulemaking.

Separation of administrative and other powers. Zoning.

Bias and prejudice.

Alcohol Beverage Control Board had no reason to disqualify member who had been replaced as chair of the Board, but continued to hold position on Board, from proceeding on application for retailer's license. *Dupont Circle Citizens Ass'n v. District of Columbia Alcoholic Bev. Control Bd.*, 766 A.2d 59, 2001 D.C. App. LEXIS 18 (2001).

In seeking recusal of an agency decisionmakers acting in an adjudicative or quasi-judicial capacity on the ground of bias, a party initially must allege facts that: (1) are material and stated with particularity; (2) are such that, if true, they would convince a reasonable person that a bias exists; and (3) show that the bias is personal as opposed to judicial, in nature. *Dupont Circle Citizens Ass'n v. District of Columbia Alcoholic Bev. Control Bd.*, 766 A.2d 59, 2001 D.C. App. LEXIS 18 (2001).

Construction and application.

Fact that District of Columbia Administra-

tive Procedure Act expressly imposes a statement of reasons requirement only in contested cases does not bar imposing a requirement to state reasons in other contexts; the act was meant only to prescribe minimum procedures. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1505(c), 1-1510. *Citizens Ass'n of Georgetown, Inc. v. Zoning Com. of District of Columbia*, 477 F.2d 402, 1973 U.S. App. LEXIS 11831 (C.A.D.C. 1973).

The Public Service Commission (PSC) is subject to the procedural requirements of the Administrative Procedure Act (APA). *Wash. Gas Energy Servs. v. District of Columbia PSC*, 893 A.2d 981, 2006 D.C. App. LEXIS 94 (2006).

An administrative agency is a creature of statute and may not act in excess of its statutory authority. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Administrative Procedure Act was intended to apply to the Public Service Commission. D.C. Code § 1-1501 et seq. *Chesapeake & Potomac Tel. Co. v. Public Service Com.*, 339 A.2d 710, 1975 D.C. App. LEXIS 397 (1975).

The District of Columbia Administrative Procedure Act applies to proceedings under the Unemployment Compensation Act. D.C. Code § 1-1501 et seq. *Wallace v. District Unemployment Compensation Board*, 289 A.2d 885, 1972 D.C. App. LEXIS 368 (1972).

The District of Columbia Administrative Procedure Act applies to proceedings under the

Unemployment Compensation Act. D.C. Code §§ 1-1502(8), 46-311(b). *Woodridge Nursery School v. Jessup*, 269 A.2d 199, 1970 D.C. App. LEXIS 340 (App. 1970).

The District of Columbia Administrative Procedure Act should have been applied in posthearing procedure by the Unemployment Compensation Board in unemployment compensation proceeding. D.C. Code §§ 1-1501 et seq., 46-310(a). *Woodridge Nursery School v. Jessup*, 269 A.2d 199, 1970 D.C. App. LEXIS 340 (App. 1970).

Construction with federal law.

District of Columbia Administrative Procedure Act is not law of United States for purpose of establishing federal question jurisdiction. D.C. Code § 1-1501 et seq.; 18 U.S.C. § 1363. *Milhouse v. Levi*, 548 F.2d 357, 1976 U.S. App. LEXIS 5884 (C.A.D.C. 1976).

District of Columbia Administrative Procedure Act (DCAPA) is generally to be interpreted akin to the federal Administrative Procedure Act (APA). *Lightfoot v. District of Columbia*, 339 F.Supp.2d 78, 2004 U.S. Dist. LEXIS 21140 (2004), reversed by, remanded by 448 F.3d 392, 371 U.S. App. D.C. 96, 2006 U.S. App. LEXIS 12597 (2006).

Regulations, concerning eligibility for homemaker services funded with federal block grant, which were not promulgated in accordance with Administrative Procedure Act (APA) were invalid, and Department of Human Services' (DHS') later compliance with APA did not preclude court from reinstating homemaker benefits denied under the invalid regulations. D.C. Code 1981, §§ 1-1501 to 1-1542; Social Security Act, §§ 2001, 2002(a)(2), as amended, 42 U.S.C. §§ 1397, 1397a(a)(2). *Webb v. District of Columbia Dep't of Human Services*, 618 A.2d 148, 1992 D.C. App. LEXIS 327 (1992).

Federal court decisions, which depended upon language of the federal Administrative Procedure Act [5 U.S.C. § 551 et seq.], were not pertinent in decision under state Administrative Procedure Act [D.C. Code 1981, § 1-1501 to 1-1510] which contained no equivalent language. *Dell v. Department of Employment Services*, 499 A.2d 102, 1985 D.C. App. LEXIS 496 (1985).

Change in Department of Health Services guidelines that eliminated provision for "spend-down" of resources in determination of medic-aid eligibility was not invalid for noncompliance with requirements of Administrative Procedure Act. D.C. Code 1981, § 1-1501 et seq. *Hamer v. Department of Human Services, etc.*, 492 A.2d 1253, 1985 D.C. App. LEXIS 382 (1985).

Construction with other laws.

Discharged employee's action under Human Rights Act did not accrue until Court of Appeals

dismissed without prejudice employee's petition for review; employee could not be required to anticipate development of "contested case" jurisprudence and bring action in superior court seeking review of Office of Human Rights' dismissal of her administrative complaint. D.C. Code 1981, §§ 12-301, 12-301(8). *Simpson v. District of Columbia Office of Human Rights*, 597 A.2d 392, 1991 D.C. App. LEXIS 266 (1991).

District of Columbia Council has authority to, and intended to create an exception to contested case review by the Court of Appeals under the District of Columbia Administrative Procedure Act for certain cases adjudicated under the Traffic Adjudication Act; therefore, even though the adjudicative nature of such proceedings was functionally consistent with the general definition of a contested case, there was no conflict between the Traffic Adjudication Act and the District of Columbia Administrative Procedure Act. D.C. Code 1973, § 40-603(i); D.C. Code 1978 Supp. §§ 1-121 et seq., 1-147(a)(1), 1-1501 et seq.; D.C. Code 1980 Supp. § 4-1101 et seq. *District of Columbia v. Sullivan*, 436 A.2d 364, 1981 D.C. App. LEXIS 377 (1981).

Conclusion that procedural requirements of Administrative Procedure Act were applicable to Public Service Commission was not weakened by statute which provides, inter alia, that District of Columbia Court of Appeals has jurisdiction to review orders and decisions of any agency of the District in accordance with Administrative Procedure Act, and may review orders or decisions of the Commission in accordance with Commission's organic act. D.C. Code §§ 1-1501 et seq., 11-722, 43-101 to 43-1007. *Chesapeake & Potomac Tel. Co. v. Public Service Com.*, 339 A.2d 710, 1975 D.C. App. LEXIS 397 (1975).

To hold that the likelihood of failure to succeed at administrative level justified resort to court of general jurisdiction would frustrate specific mandate of Congress giving court discretion as to whether to review adverse orders of the Commissioner under the District of Columbia Motor Vehicle Safety Responsibility Act and providing that such review, if allowed, be on an administrative record and as provided by District of Columbia Administrative Procedure Act. D.C. Code §§ 1-1501 to 1-1510, 11-721, 40-420; D.C. Code Court of Appeals Rules, rules 15-20. *Smith v. Murphy*, 294 A.2d 357, 1972 D.C. App. LEXIS 241 (1972).

The District of Columbia Administrative Procedure Act superseded any law or procedure of the Commissioner, the Council, and the agencies of the District government, where they conflicted with the provisions of the Act. D.C. Code § 1-1501 et seq. *Woodridge Nursery*

School v. Jessup, 269 A.2d 199, 1970 D.C. App. LEXIS 340 (App. 1970).

Due process.

Supervision of practices in public places by Public Utilities Commission in manner prescribed in the District of Columbia meets requirements both of substantive and procedural due process when it is not arbitrarily and capriciously exercised. *Public Utilities Commission of District of Columbia v. Pollak*, 72 S.Ct. 813, 1952 U.S. LEXIS 2061 (U.S. Dist. Col. 1952).

Once due process is satisfied, amount and form of any additional process agency wishes to provide is left almost entirely to its discretion. *U.S. Const. Amend. 14. Louisiana Ass'n of Indep. Producers & Royalty Owners v. FERC*, 958 F.2d 1101, 1992 U.S. App. LEXIS 3745 (C.A.D.C. 1992).

In action challenging closing of public health clinic by District of Columbia officials, claim that closing of clinic without affording patients a hearing violated due process clause of Fifth Amendment was substantial enough to permit exercise of pendent jurisdiction over closely related local law claims. *D.C. Code 1978 Supp. §§ 1-171 to 1-171r, 1-1501 to 1-1510, 32-322; U.S. Const. Amend. 5; 18 U.S.C. § 1343. Spivey v. Barry*, 665 F.2d 1222, 1981 U.S. App. LEXIS 17915 (C.A.D.C. 1981).

In the absence of regulations directed specifically to hacker's license revocation proceedings, those regulations which apply on their face only to appeals from denials of license applications govern revocation proceedings as well as appeal proceedings, as those threatened with suspension or revocation of governmentally bestowed license are entitled to at least same quantum of procedural protections as are those appealing from denial of a license. *D.C. Code § 1-1501 et seq. Babazadeh v. District of Columbia Hackers' License Appeal Board*, 390 A.2d 1004, 1978 D.C. App. LEXIS 554 (1978).

Hackers' License Appeal Board's procedure failed to accord licensee protections mandated by both the Administrative Procedure Act and Board's own regulations, where licensee was given no notice of his right to inspect his file even though he was appearing pro se. *D.C. Code § 1-1501 et seq. Babazadeh v. District of Columbia Hackers' License Appeal Board*, 390 A.2d 1004, 1978 D.C. App. LEXIS 554 (1978).

Judicial review.

If the findings of the Director of the Department of Employment Services are not supported by substantial evidence, they cannot be sustained, and the Court of Appeals is required to set them aside. *Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs.*, 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

The Court of Appeals must uphold the workers' compensation decision of the Director of the Department of Employment Services if it is in accordance with the law and supported by substantial evidence; evidence is substantial when a reasonable mind might accept it as adequate to support a conclusion. *Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs.*, 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

Court of Appeals' power to review administrative proceedings is conferred by the Administrative Procedure Act. *D.C. Code 1981, §§ 1-1501 to 1-1510. Lamont v. Rogers*, 479 A.2d 1274, 1984 D.C. App. LEXIS 459 (1984).

Since definition of "contested case" in District of Columbia Administrative Procedure Act was intended to be synonymous with that of "adjudication" in the federal Administrative Procedure Act, decisions of District of Columbia Court of Appeals construing provision of District of Columbia Administrative Procedure Act, insofar as feasible, should be harmonious with those of federal courts construing corresponding provision of federal Administrative Procedure Act. *D.C. Code § 1-1501 et seq.; 5 U.S.C. § 500 et seq. Debruhl v. District of Columbia Hackers' License Appeal Board*, 384 A.2d 421, 1978 D.C. App. LEXIS 440 (1978).

District of Columbia Administrative Procedure Act controls review of all District of Columbia unemployment compensation cases, with scope of Court of Appeals' review under the statute limited to determinations whether findings and conclusions of District Unemployment Compensation Board are supported by substantial evidence and whether its rulings on questions of law are correct. *D.C. Code § 1-1501 et seq. American Sec. & Trust Co., N.A. v. District Unemployment Compensation Board*, 376 A.2d 824, 1977 D.C. App. LEXIS 354 (1977).

Statute providing, inter alia, that District of Columbia Court of Appeals has jurisdiction to review orders and decisions of any agency of the District in accordance with Administrative Procedure Act, and may review orders or decision of the Public Service Commission in accordance with Commission's organic act, carves out only a limited area in which Administrative Procedure Act is inapplicable to the Commission, that being in the area of standard and scope of review, rather than a wholesale exemption from Administrative Procedure Act coverage. *D.C. Code §§ 1-1501 et seq., 11-722. Chesapeake & Potomac Tel. Co. v. Public Service Com.*, 339 A.2d 710, 1975 D.C. App. LEXIS 397 (1975).

Other remedies.

Even if District of Columbia officials violated Administrative Procedure Act in closing public health clinic, injunctive relief was inappropriate.

ate after funding which would have allowed clinic to remain open expired. D.C. Code 1978 Supp. §§ 1-1501 to 1-1510. *Spivey v. Barry*, 665 F.2d 1222, 1981 U.S. App. LEXIS 17915 (C.A.D.C. 1981).

Prisons and prison procedures.

Prison administrators should be accorded wide-ranging deference in adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security. *Robinson v. Palmer*, 619 F. Supp. 344, 1985 U.S. Dist. LEXIS 17014 (1985).

Purposes and legislative intent.

District of Columbia Administrative Procedure Act was an effort not only to expand rights of review of administrative action in the District of Columbia but also to centralize such review in one place and to eliminate disorderliness and lack of uniformity of decision inherent in multiple tribunals. D.C. Code§ 1-1501 et seq. *Cheek v. Washington*, 333 F. Supp. 481, 1971 U.S. Dist. LEXIS 12288 (1971).

A statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by the legislature in express terms. *Wash. Gas Energy Servs. v. District of Columbia PSC*, 893 A.2d 981, 2006 D.C. App. LEXIS 94 (2006).

Rulemaking.

District's use of trending methodology in making property tax assessments did not amount to a rule that was subject to rulemaking under the District of Columbia Administrative Procedure Act (DCAPA); the use of the trending methodology did not establish, for any property, a binding norm or value that was finally determinative of the issues or rights to which it was addressed, and the Office of Tax and Revenue (OTR) and the Board of Real Property Assessments and Appeals (BRPAA) were left free to exercise discretion to follow or not follow the results of the trending methodology in individual cases. *District of Columbia v. Craig*, 930 A.2d 946, 2007 D.C. App. LEXIS 458 (2007), writ of certiorari denied by 554 U.S. 905, 128 S. Ct. 2947, 171 L. Ed. 2d 868, 2008 U.S. LEXIS 5003, 76 U.S.L.W. 3654 (2008).

A regulation is retroactive when it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. *Wash. Gas Energy Servs. v. District of Columbia PSC*, 893 A.2d 981, 2006 D.C. App. LEXIS 94 (2006).

An agency may establish rules of general application in either a statutory rule-making procedure or an individual adjudication.

Epstein v. D.C. Dep't of Empl. Servs., 850 A.2d 1140, 2004 D.C. App. LEXIS 272 (2004).

A validly promulgated administrative rule or regulation has the force and effect of law, much like a statute. *J.C. & Assocs. v. State Bd. of Appeals & Review*, 778 A.2d 296, 2001 D.C. App. LEXIS 164 (2001).

Promulgation of regulations regarding eligibility for homemaker's benefits were subject to rule-making requirements of Administrative Procedure Act; although implementation of federal guidelines applicable to block grants was not rule making, federal guidelines were silent on eligibility standards for homemaker services programs established with block grants. D.C. Code 1981, §§ 1-1501 to 1-1542; Social Security Act, §§ 2001, 2002(a)(2), as amended, 42 U.S.C. §§ 1397, 1397a(a)(2). *Webb v. District of Columbia Dep't of Human Services*, 618 A.2d 148, 1992 D.C. App. LEXIS 327 (1992).

Administrative Procedure Act envisioned rule making as a quasi-legislative process, and where government agency performs no legislative function but only describes or refers to regulation as it is written, procedural formalities of Administrative Procedure Act are unnecessary. D.C. Code §§ 1-1501 et seq., 1-1502(6). *District of Columbia v. North Washington Neighbors, Inc.*, 367 A.2d 143, 1976 D.C. App. LEXIS 446 (1976), writ of certiorari denied by 434 U.S. 823, 98 S. Ct. 68, 54 L. Ed. 2d 80, 1977 U.S. LEXIS 2835 (1977).

Separation of administrative and other powers.

The Court of Appeals owes no deference to the Public Service Commission (PSC) with respect to its compliance with the Administrative Procedure Act (APA). *Wash. Gas Energy Servs. v. District of Columbia PSC*, 893 A.2d 981, 2006 D.C. App. LEXIS 94 (2006).

Absent express statutory or regulatory authority, a regulatory agency may not impose remedial measures. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

When the legislature passes an Act empowering administrative agencies to carry on governmental activities, the power of those agencies is circumscribed by the authority granted. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Educational Institution Licensure Commission's enabling statute gave that agency authority to grant and revoke licenses of institutions but not to adjudicate contract disputes for money damages between private individual and educational institution licensed by agency,

and thus student's action for money damages for breach of contract against law school for failure to provide programs and services listed in school's catalogue and student handbook was not subject to doctrines of exhaustion of administrative remedy and primary jurisdiction, on theory that he should have sought relief from the Commission. D.C. Code 1981, §§ 31-1601 et seq., 31-1603, 31-1605, 31-1607. *Goode v. Antioch University*, 544 A.2d 704, 1988 D.C. App. LEXIS 102 (1988).

Exclusive jurisdiction conferred by Juvenile Court Act on a District of Columbia juvenile court in judicial proceedings is not jurisdictional bar to administrative action of suspending motor vehicle operator's permit of 17-year-old driver. D.C. Code §§ 1-1501 et seq., 1-1510, 11-742, 11-1551, 16-2308, 40-302(a). *Murphy v. Heath*, 256 A.2d 421, 1969 D.C. App. LEXIS 291 (App. 1969).

Mere fact that proof at suspension hearing before permit control officer of District of Columbia Department of Motor Vehicles tended to show that 17-year-old driver, whose license was suspended, was driving while under influence of alcohol did not thereby convert proceedings, administrative in character, into a judicial proceeding of kind Congress assigned exclusively to juvenile court. D.C. Code §§ 1-1501 et seq., 1-1510, 11-742, 11-1551, 16-2301. *Murphy v. Heath*, 256 A.2d 421, 1969 D.C. App. LEXIS 291 (App. 1969).

Zoning.

Proceedings before District of Columbia zoning commission are quasi-legislative in character, not adjudicative in nature, and strictures of the District of Columbia Administrative Procedure Act and full range of due process protections necessary to an adversary adjudication are not applicable. D.C. Code § 1-1501 et seq.; National Environmental Policy Act of 1969,

§ 102(2)(C), 42 U.S.C. § 4332(2)(C). *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Inasmuch as District of Columbia zoning commission which down-zoned substantial portion of downtown area was not a federal agency, no environmental impact statement was required. D.C. Code § 1-1501 et seq.; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Only comprehensive plan with which statute governing purposes of zoning regulations requires that zoning must be consistent is the plan to be adopted pursuant to procedures of the District of Columbia's Home Rule Act. D.C. Code §§ 1-1002(a)(4)(D), 1-1501 et seq., 5-414. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

Restraints of District of Columbia Administrative Procedure Act and full range of due process protections necessary to an adversary adjudication were not applicable to rulemaking proceedings before the Zoning Commission. D.C. Code §§ 1-1501 et seq., 5-413 et seq. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

District of Columbia Administrative Procedure Act is applicable to proceedings before the Zoning Commission. D.C. Code §§ 1-1501 et seq., 1-1509, 11-722. *Capitol Hill Restoration Soc. v. Zoning Com.*, 287 A.2d 101, 1972 D.C. App. LEXIS 339 (1972).

§ 2-502. Definitions.

As used in this subchapter:

(1)(A) The term "Mayor" means the Mayor of the District of Columbia, or his or her designated agent.

(B) The term "Council" means the Council of the District of Columbia established by § 1-204.01(a) unless the term "District of Columbia Council" is used in which event it shall mean the District of Columbia Council established by subsection (a) of § 201 of Reorganization Plan No. 3 of 1967 (81 Stat. 948).

(2) The term "District" means the District of Columbia.

(3) The term "agency" includes both subordinate agency and independent agency.

(4) The term "subordinate agency" means any officer, employee, office, department, division, board, commission, or other agency of the government of the District, other than an independent agency or the Mayor or the Council,

required by law or by the Mayor or the Council to administer any law or any rule adopted under the authority of a law.

(5) The term “independent agency” means any agency of the government of the District with respect to which the Mayor and the Council are not authorized by law, other than this subchapter, to establish administrative procedures, but does not include the several courts of the District and the Tax Division of the Superior Court.

(6)(A) The term “rule” means the whole or any part of any Mayor’s or agency’s statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Mayor or of any agency.

(B) The term “rule” does not include any statement for guiding, directing or otherwise regulating vehicular or pedestrian traffic, including any statement controlling parking, standing, stopping or a construction detour; provided, that:

(i) The contents of the statement are indicated to the public on one or more signs, signals, meters, markings or other similar devices located on or adjacent to a street, avenue, road, highway or other public space;

(ii) The proposed installation, modification or removal of the statement is based on engineering or other technical considerations;

(iii) The proposed installation, modification or removal of the statement does not involve substantial policy considerations; and

(iv) The Council and the affected Advisory Neighborhood Commissions (“ANC”) are provided with 30-days written notice, excluding Saturdays, Sundays and legal holidays, of an agency’s intent to install, modify or remove any of these statements, and any ANC recommendation, if provided, is given great weight pursuant to § 1-309.10.

(7) The term “rulemaking” means Mayor’s or agency’s process for the formulation, amendment, or repeal of a rule.

(8) The term “contested case” means a proceeding before the Mayor or any agency in which the legal rights, duties, or privileges of specific parties are required by any law (other than this subchapter), or by constitutional right, to be determined after a hearing before the Mayor or before an agency, but shall not include:

(A) Any matter subject to a subsequent trial of the law and the facts de novo in any court;

(B) The selection or tenure of an officer or employee of the District;

(C) Proceedings in which decisions rest solely on inspections, tests, or elections;

(D) Cases in which the Mayor or an agency act as an agent for a court of the District; and

(E) Requests for relief from the requirements of Chapter 26 of Title 11 of the District of Columbia Municipal Regulations (11 DCMR 2600 et seq.), as permitted under that chapter; provided, that such requests shall be approved under such procedures as may be adopted by the Zoning Commission, which procedures need not include a hearing.

(9) The term “person” includes individuals, partnerships, corporations, associations, and public or private organizations of any character other than the Mayor, the Council, or an agency.

(10) The term “party” includes the Mayor and any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any proceeding before the Mayor or an agency, but nothing herein shall be construed to prevent the Mayor or an agency from admitting the Mayor or any person or agency as a party for limited purposes.

(11) The term “order” means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of the Mayor or of any agency in any matter other than rulemaking, but including licensing.

(12) The term “license” includes the whole or part of any permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission granted by the Mayor or any agency.

(13) The term “licensing” includes process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license by the Mayor or an agency.

(14) The term “relief” includes the whole or part of any Mayor’s or agency’s:

(A) Grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) Recognition of any claim, right, immunity, privilege, exemption, or exception; and

(C) Taking of any other action upon the application or petition of, and beneficial to, any person.

(15) The term “proceeding” means any process of the Mayor or an agency as defined in paragraphs (6), (11), and (12) of this section.

(16) The term “sanction” includes the whole or part of any Mayor’s or agency’s:

(A) Prohibition, requirement, limitation, or other condition affecting the freedom of any person;

(B) Withholding of relief;

(C) Imposition of any form of penalty or fine;

(D) Destruction, taking, seizure, or withholding of property;

(E) Assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) Requirement, revocation, or suspension of a license; and

(G) Taking of other compulsory or restrictive action.

(17) The term “regulation” means the whole or any part of any District of Columbia Council statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Mayor, District of Columbia Council, or any agency.

(18) The term “public record” includes all books, papers, maps, photographs, cards, tapes, recordings, vote data (including ballot-definition material, raw data, and ballot images), or other documentary materials, regardless of physical form or characteristics prepared, owned, used in the possession of,

or retained by a public body. Public records include information stored in an electronic format.

(18A) The term “public body” means the Mayor, an agency, or the Council of the District of Columbia.

(19) The term “adjudication” means the agency process, other than rulemaking, for the formulation, issuance, and enforcement of an order.

(20) The term “publish” means, for the official publications described in § 2-504, to issue, in print or electronic format, textual or graphic material for sale or distribution to the public.

(Oct. 21, 1968, 82 Stat. 1204, Pub. L. 90-614, § 3; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(b)-(q), 22 DCR 2048; Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), (d), 23 DCR 9532b; Apr. 3, 2001, D.C. Law 13-249, § 2, 48 DCR 662; Apr. 27, 2001, D.C. Law 13-283, § 2, 48 DCR 1917; Mar. 14, 2007, D.C. Law 16-275, § 201, 54 DCR 880; Mar. 25, 2009, D.C. Law 17-353, § 162, 56 DCR 1117; Feb. 4, 2010, D.C. Law 18-103, § 3, 56 DCR 9169; Sept. 24, 2010, D.C. Law 18-223, § 1082, 57 DCR 6242.)

Cross references. — “Agency” defined to mean and include executive departments, other establishments in executive branch, and any independent regulatory agency, see § 8-171.02.

Section references. — This section is referred to in §§ 2-539, 2-551, 2-631, 2-1831.01, 4-1303.31, 6-209, and 11-722.

Prior Codifications. — 1981 Ed., § 1-1502. 1973 Ed., § 1-1502.

Effect of amendments. — D.C. Law 13-249, in par. (6), designated subpar. (A) and added subpar. (B).

D.C. Law 13-283 rewrote par. (18) and added par. (18A). Prior to amendment, par. (18) read: “(18) The term ‘public record’ includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by the Mayor and agencies.”

D.C. Law 16-275, in par. (8), added subpar. (E).

D.C. Law 17-353, in par. (8)(E), substituted “Requests” for “Request”.

D.C. Law 18-103, in par. (18), substituted “tapes, recordings, vote data (including ballot-definition material, raw data, and ballot images),” for “tapes, recordings,”.

D.C. Law 18-223 added par. (20).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3 of Omnibus Election Reform Emergency Amendment Act of 2009 (D.C. Act 18-236, November 30, 2009, 56 DCR 9154).

For temporary (90 day) amendment of section, see § 1082 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 1-19. — For legislative history of D.C. Law 1-19, see Historical and Statutory Notes following § 2-501.

Legislative history of Law 1-96. — For legislative history of D.C. Law 1-96, see Historical and Statutory Notes following § 2-531.

Legislative history of Law 13-249. — Law 13-249, the “Administrative Procedure Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-285, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2001, respectively. Signed by the Mayor on December 22, 2000, it was assigned Act No. 13-536 and transmitted to Both Houses of Congress for its review. D.C. Law 13-249 became effective on April 3, 2001.

Legislative history of Law 13-283. — Law 13-283, the “Freedom of Information Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-829, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 22, 2001, it was assigned Act No. 13-581 and transmitted to Both Houses of Congress for its review. D.C. Law 13-283 became effective on April 27, 2001.

Legislative history of Law 16-275. — Law 16-275, the “Inclusionary Zoning Implementation Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-779, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-632 and transmitted to both Houses of Congress for its review. D.C. Law 16-275 became effective on March 14, 2007.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 2-218.42.

Legislative history of Law 18-103. — Law 18-103, the “Omnibus Election Reform Amendment Act of 2009”, was introduced in Council and assigned Bill No. 18-345, which was referred to the Committee on Government Operations and the Environment. The bill was adopted on first and second readings on October 6, 2009, and November 3, 2009, respectively. Signed by the Mayor on November 30, 2009, it was assigned Act No. 18-238 and transmitted to both Houses of Congress for its review. D.C. Law 18-103 became effective on February 4, 2010.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 2-218.76.

Short title. — Short title: Section 1081 of D.C. Law 18-223 provided that subtitle I of title

I of the act may be cited as the “Legal Publications Modernization Amendment Act of 2010”.

Editor’s notes. — Uniform Law: This section is based upon § 1 of the Uniform Law Commissioners’ Model State Administrative Procedure Act (1961 Act).

“District of Columbia Council statement,” referred to in (17), should probably appear as “statement of the Council of the District of Columbia” or “Council statement,” in view of (1)(B) and the fact that this section refers to current and ongoing Council activity.

District of Columbia Tax Court abolished: The District of Columbia Tax Court, formerly referred to in paragraph (5), was abolished by § 161(a) of Pub. L. 91-358, 84 Stat. 579, and the functions thereof are now vested in the Tax Division of the Superior Court of the District of Columbia.

CASE NOTES

ANALYSIS

Adjudication.

Agency.

Construction and application.

Construction with federal law.

Constructions with other law.

Contested case.

—Appellate judicial jurisdiction, contested case.

—Decisions based upon election, contested case.

—Determination of rights after trial-type hearing, contested case.

—Findings, contested case.

—In general.

—Licensure and license revocation, contested case.

—Matter subject to subsequent trial de novo, contested case.

—Prisons and prisoners, contested case.

—Quasi-legislative or quasi-judicial determinations, contested case.

—Selection or tenure public officer or employee, contested case.

—Zoning and planning determinations, contested case.

Order.

Party.

Person or interested person.

Regulation.

Relief.

Rule.

Rulemaking.

Sanctions.

Adjudication.

Branch bank charter hearing which was held by Comptroller of the Currency and which was concerned primarily with legal rights, duties or privileges of Texas banks in question and with

a particular situation rather than general policy constituted an adjudicatory proceeding, and thus due process required that findings of fact be made in support of any conclusion or decision made as a consequence of such hearing. National Bank Act, 12 U.S.C. §§ 26, 27, 36; 5 U.S.C. §§ 551 et seq., 551(7), 553, 554(a), 557(c)(3)(A); 18 U.S.C. § 2201; U.S. Const. Amend. 5; D.C. Code § 1-1502(8). Wood County Bank v. Camp, 348 F. Supp. 1321, 1972 U.S. Dist. LEXIS 11729 (1972), vacated without op. by 489 F.2d 1273, 160 U.S. App. D.C. 149 (1973), vacated without op. by 489 F.2d 1273, 160 U.S. App. D.C. 149 (1973).

Agency.

Under District of Columbia law, metropolitan area transit authority was not “agency” within meaning of D.C. Administrative Procedure Act, and thus was not agency subject to disclosure requirements of District of Columbia Freedom of Information Act (DC-FOIA). D.C. Code 1981, §§ 1-1502(3-5), 1-1529. Kiska Constr. Corporation-U.S.A. v. Washington Metro. Area Transit Auth., 167 F.3d 608, 1999 U.S. App. LEXIS 2505 (C.A.D.C. 1999).

Mayor was authorized to reduce funds allocated to District of Columbia public library in budget enacted by District’s Council and in Appropriations Act enacted by Congress, in attempting to balance District’s budget, despite library’s status as statutory independent agency; mayor had statutory duty to balance budget regardless of sums previously appropriated, classification of library as statutory independent agency did not make library independent of mayor’s fiscal authority, and neither Council’s budget nor Appropriations Act contained any language requiring that reductions be made only in funding of agencies under

mayor's control. D.C. Code 1981, §§ 1-299.6, 1-1502(5), 37-101, 37-106, 47-301(a)(1), 47-310(a)(9), 47-313(d); District of Columbia Appropriations Act, 1990, § 103, 103 Stat. 1267. *Hazel v. Barry*, 580 A.2d 110, 1990 D.C. App. LEXIS 226 (1990).

District of Columbia Court of Appeals has jurisdiction to review administrative decisions or orders only if they emanate from agencies of the District of Columbia. D.C. Code §§ 1-1502(3-5), 1-1510, 11-722. *Latimer v. Joint Committee on Landmarks of Nat'l Capital*, 345 A.2d 484, 1975 D.C. App. LEXIS 248 (1975).

Joint Committee on Landmarks of the National Capital as an intergovernmental agency was not an agency of the District of Columbia, and the District of Columbia Court of Civil Appeals lacked jurisdiction to entertain petition for review of its action under the District of Columbia Administrative Procedure Act. D.C. Code §§ 1-1501 et seq., 1-1510, 11-722; National Historic Preservation Act of 1966, § 1 et seq., 16 U.S.C. § 470 et seq.; National Capital Planning Act of 1952, § 2, 40 U.S.C. § 71a; 40 U.S.C. § 104. *Latimer v. Joint Committee on Landmarks of Nat'l Capital*, 345 A.2d 484, 1975 D.C. App. LEXIS 248 (1975).

The National Capital Housing Authority is not an "agency of the District of Columbia" within District of Columbia Administrative Procedure Act which establishes procedures to be observed by the commissioner, the council, and agencies of the District government. D.C. Code § 1-1501. *Coleman v. United States*, 311 A.2d 496, 1973 D.C. App. LEXIS 387 (1973).

Petition for review of an order of the Contract Appeals Board for the District of Columbia cannot be brought in the Court of Appeals, since the Board is not an "agency" within meaning of the District Administrative Procedure Act. D.C. Code §§ 1-1501 et seq., 1-1502(4, 5). *Gunnell Constr. Co. v. Contract Appeals Board*, 282 A.2d 556, 1971 D.C. App. LEXIS 219 (1971).

Construction and application.

"Contested case" is synonymous with "adjudication" as defined in the Administrative Procedure Act, except in ratemaking procedures. 5 U.S.C. § 551(7); D.C. Code § 1-1502(8). *Wood County Bank v. Camp*, 348 F. Supp. 1321, 1972 U.S. Dist. LEXIS 11729 (1972), vacated without op. by 489 F.2d 1273, 160 U.S. App. D.C. 149 (1973), vacated without op. by 489 F.2d 1273, 160 U.S. App. D.C. 149 (1973).

Construction with federal law.

As the District of Columbia Administrative Procedure Act is modeled on federal Act to great extent, particularly with respect to definition of adjudicatory proceedings, judicial constructions of analogous provisions in the federal Act were persuasive. 5 U.S.C. §§ 551 et seq., 554(a); D.C. Code 1978 Supp., § 1-1502(8)(C).

Pendleton v. District of Columbia Bd. of Elections & Ethics, 449 A.2d 301, 1982 D.C. App. LEXIS 405 (1982).

Constructions with other law.

Under statute giving District of Columbia Financial Responsibility and Management Assistance Authority power to issue orders, rules, or regulations within authority of any agency of District government, "order, rule, or regulation" did not have to be construed in manner consistent with District's Administrative Procedure Act (APA). D.C. Code 1981, § 1-1502. *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 132 F.3d 775, 1998 U.S. App. LEXIS 83 (C.A.D.C. 1998).

There is no necessary inconsistency between Procurement Practices Act provision granting Contract Appeals Board (CAB) exclusive jurisdiction to review protest of solicitation or award of contract and superior court's authority under All Writs Act to issue emergency relief pending outcome of CAB proceedings. 18 U.S.C. §§ 1651, 1651(a); D.C. Code 1981, §§ 1-1189.3, 1-1502(8). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Contested case.

— Appellate judicial jurisdiction, contested case.

The Court of Appeals must uphold the workers' compensation decision of the Director of the Department of Employment Services if it is in accordance with the law and supported by substantial evidence; evidence is substantial when a reasonable mind might accept it as adequate to support a conclusion. *Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs.*, 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

Court of Appeals had jurisdiction to consider a petition to review decision of the District of Columbia Housing Authority (DCHA) terminating recipient's eligibility for housing subsidies under the Tenant Assistance Program (TAP), based on allegation that she fraudulently under-reported her income in order to obtain more assistance; Court had jurisdiction to review contested cases, and DCHA's decision was made in a trial-type hearing required by the Constitution. *Powell v. D.C. Hous. Auth.*, 818 A.2d 188, 2003 D.C. App. LEXIS 132 (2003).

Court of Appeals' jurisdiction to hear a petition to review a decision by an administrative agency is limited to contested cases. *Powell v. D.C. Hous. Auth.*, 818 A.2d 188, 2003 D.C. App. LEXIS 132 (2003).

Court of Appeals has the authority to order a contested case hearing when an agency withholds the right to such a hearing in error. *Richard Milburn Pub. Charter Alternative*

High Sch. v. Cafritz, 798 A.2d 531, 2002 D.C. App. LEXIS 293 (2002).

Administrative Procedure Act restricted Court of Appeals' direct review to decisions in "contested cases" and, thus, it lacked jurisdiction to review preliminary determination of the former Department of Human Rights and Minority Business Development that there was no probable cause to believe that employer had violated Family and Medical Leave Act. *Small v. District of Columbia Office of Human Rights*, 768 A.2d 994, 2001 D.C. App. LEXIS 66 (2001).

When Congress legislates that certain types of agency actions shall not have contested case status, those cases are not proper subject of direct appellate jurisdiction. D.C. Code 1981, § 11-722. *United States v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 995, 1994 D.C. App. LEXIS 50 (1994).

Bid protest is not "contested case," within meaning of District of Columbia Administrative Procedure Act (DCAFA) allowing District of Columbia Court of Appeals to hear direct appeal of agency decision only in contested case, and thus, disappointed bidder seeking relief from decision on bid protest by Contract Appeals Board (CAB) must resort in first instance to superior court. D.C. Code 1981, §§ 1-1189.3, 1-1502(8), 1-1510(a); 18 U.S.C. §§ 1651, 1651(a). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Court of Appeals' jurisdiction to hear direct appeal from administrative orders and decisions is limited to petitions from decisions in proceedings in which legal rights, duties, or privileges are required, by any law or by constitutional right, to be determined after agency hearing. D.C. Code 1981, §§ 1-1502(8), 1-1510(a), 11-722. *Lawrence v. District of Columbia Bd. of Elections & Ethics*, 611 A.2d 529, 1992 D.C. App. LEXIS 197 (1992).

Court of Appeals has jurisdiction to review order or decision of mayor or agency only in contested case. D.C. Code 1981, §§ 1-1510(a), 11-722. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 1988 D.C. App. LEXIS 208 (1988).

Contract Appeals Board was not presented with contested case and its decision was not appealable to Court of Appeals where contractor challenged cancellation of bid in proceeding that should have been brought as protest, notwithstanding contractor's allegation that proceeding was appeal of Board's decision. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 1988 D.C. App. LEXIS 208 (1988).

Direct review of administrative agency orders is limited, in absence of statutory provision permitting review, to contested cases, i.e., where agency proceeding determines legal rights, duties or privileges of specific parties,

and where proceeding below was trial-type hearing required by law. D.C. Code 1981, § 1-1502(8). *Communication Workers of America, Local 2336 v. District of Columbia Taxicab Com.*, 542 A.2d 1221, 1988 D.C. App. LEXIS 130 (1988).

In order for court to have jurisdiction to review agency actions, case must be one that requires trial-type hearing before agency either by statute or by constitutional right. D.C. Code 1981, §§ 1-1502(8), 1-1510, 11-722. *Rones v. District of Columbia Dep't of Housing & Community Dev.*, 500 A.2d 998, 1985 D.C. App. LEXIS 574 (1985).

Under the Administrative Procedure Act, an administrative proceeding is a "contested case," for purposes of judicial review, only if a trial-type hearing is implicitly required by either the organic act or constitutional right. D.C. Code 1981, §§ 1-1502(8), 1-1510(a). *Lamont v. Rogers*, 479 A.2d 1274, 1984 D.C. App. LEXIS 459 (1984).

Court of Appeals had jurisdiction to hear petition for review of ruling by Hackers' License Appeal Board because it arose from "contested case" as that term is defined in Administrative Procedure Act. D.C. Code 1981, §§ 1-1502(8), 1-1510(a). *Allen v. District of Columbia Hackers' License Appeal Bd.*, 471 A.2d 271, 1984 D.C. App. LEXIS 305 (1984).

Award of contract for an on-line lottery system was not a "contested case" under District of Columbia code provision, and direct appeal from decision of the Lottery and Charitable Control Board awarding the contract would not lie in the Court of Appeals; hence, the superior court properly determined that it had jurisdiction to review the Board's decision. D.C. Code 1981, §§ 1-1502(8), 1-1509, 1-1510, 2-2536. *Network Technical Services, Inc. v. D.C. Data Co.*, 464 A.2d 133, 1983 D.C. App. LEXIS 440 (1983).

Under the section of the District of Columbia Code which authorizes the District of Columbia Court of Appeals to review agency action in accordance with the District of Columbia Administrative Procedure Act, the Court of Appeals has jurisdiction to review directly only agency action that is taken in a contested case. D.C. Code §§ 1-1502(8), 1-1510, 11-722. *Capitol Hill Restoration Soc. v. Moore*, 410 A.2d 184, 1979 D.C. App. LEXIS 531 (1979).

Court is empowered only to review directly agency decisions or actions entered in "contested cases." D.C. Code §§ 1-1501 et seq., 1-1502(8), (8)(B). *Wells v. District of Columbia Board of Education*, 386 A.2d 703, 1978 D.C. App. LEXIS 380 (1978).

Since order of Minimum Wage and Industrial Safety Board advising employer that it owed and should pay a former employee all commissions earned prior to termination of his employment was enforceable only through criminal

prosecution or civil litigation in which issues of fact or law would be determined entirely upon the pleadings and trial record, and not upon the proceedings before the Board, Board's order was not an "appealable order" under the Administrative Procedure Act. D.C. Code §§ 1-1502(8), 1-1510, 36-605, 36-606(a), 36-608(a). *Sonderling Broadcasting Corp. v. District of Columbia Minimum Wage & Industrial Safety Board*, 315 A.2d 828, 1974 D.C. App. LEXIS 378 (1974).

— **Decisions based upon election, contested case.**

Proceeding wherein Board of Elections credited write-in ballot marked "Mr. Long" to intervenor "De Long Harris, Jr." did not fall within the "elections" exception to the District of Columbia Administrative Procedure Act definition of contested cases and, thus, procedural requirements applicable to contested cases applied to proceeding and the Board was required to base its decision on substantial evidence of record. D.C. Code 1978 Supp., §§ 1-1501 et seq., 1-1502(8)(C), 1-1509(e). *Pendleton v. District of Columbia Bd. of Elections & Ethics*, 449 A.2d 301, 1982 D.C. App. LEXIS 405 (1982).

— **Determination of rights after trial-type hearing, contested case.**

A "contested case hearing," within meaning of District of Columbia Administrative Procedures Act (DC APA), is understood to mean a trial-type hearing, which is implicitly required by either the organic act or constitutional right. *Richard Milburn Pub. Charter Alternative High Sch. v. Cafritz*, 798 A.2d 531, 2002 D.C. App. LEXIS 293 (2002).

Contested case hearing must be provided when it is either statutorily or constitutionally compelled and adjudicatory as opposed to legislative in nature. *Richard Milburn Pub. Charter Alternative High Sch. v. Cafritz*, 798 A.2d 531, 2002 D.C. App. LEXIS 293 (2002).

Proceeding to review decision of Contract Appeals Board (CAB) in bid protest proceeding was not "contested case" within jurisdiction of Court of Appeals, although CAB rules allowed for trial type hearing in bid protest case; CAB had not held such a hearing, and regulations did not require such hearings, but made them discretionary with CAB. D.C. Code 1981, §§ 1-1502(8), 1-1510(a); D.C.Mun.Reg. Title 27, § 311.1. *Francis v. Recycling Solutions*, 695 A.2d 63, 1997 D.C. App. LEXIS 138 (1997).

Mere possibility of holding discretionary hearing on bid protest, particularly in case where Contract Appeals Board (CAB) has decided not to hold one, does not meet "required by law" element of "trial type hearing" criterion for contesting case. D.C. Code 1981, §§ 1-1502(8), 1-1510(a); D.C.Mun.Reg. Title 27,

§ 311.1. *Francis v. Recycling Solutions*, 695 A.2d 63, 1997 D.C. App. LEXIS 138 (1997).

Contract Appeals Board's (CAB) adjudication of facts in bid protest case did not satisfy "trial type hearing" requirement for contested case. D.C. Code 1981, §§ 1-1502(8), 1-1510(a); D.C.Mun.Reg. Title 27, § 311.1. *Francis v. Recycling Solutions*, 695 A.2d 63, 1997 D.C. App. LEXIS 138 (1997).

Contractor's appeal of decision of Department of Administrative Services to Contract Appeals Board may present contested case involving trial-type hearing, although contractor's protest will not result in contested case permitting review by Court of Appeals. D.C. Code 1981, §§ 1-1189.4, 1-1189.6, 1-1189.8. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 1988 D.C. App. LEXIS 208 (1988).

"Contested case" over which Court of Appeals has jurisdiction is proceeding in which legal rights, duties, or privileges of specific parties are required by law or by constitutional right to be determined after trial-type hearing. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 1988 D.C. App. LEXIS 208 (1988).

Taxicab Commission's emergency order increasing rates did not arise from contested case and thus was not subject to judicial review; even if contesting party did not receive trial-type hearing to which it was entitled, order involved policy decision directed toward general public rather than adjudication of rights of specific parties. D.C. Code 1981, § 1-1502(8). *Communication Workers of America, Local 2336 v. District of Columbia Taxicab Com.*, 542 A.2d 1221, 1988 D.C. App. LEXIS 130 (1988).

District of Columbia Historic Preservation Review Board proceeding to determine whether landowner's properties should be designated as historic landmarks was not "contested case," and thus, Court of Appeals had no jurisdiction to review Board's order designating properties as landmarks; no administrative hearing on matter was either statutorily or constitutionally compelled. D.C. Code 1981, §§ 1-1502(8), 1-1510(a). *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

Where statute authorized mayor to discontinue water services only if owner or occupant of premises failed to pay water charges, customer, who requested opportunity to contest water/sewer service bill in trial-type hearing pursuant to District of Columbia Administrative Procedure Act, had property interest in water services provided by District. D.C. Code 1973, §§ 1-1502(8), 43-1521b; D.C. Code 1981, §§ 1-1502(8), 43-1528; U.S. Const. Amend. 14. *Bryant v. Barry*, 456 A.2d 1252, 1983 D.C. App. LEXIS 341 (1983).

Although customer had property interest in water services, due process did not require that she receive trial-type hearing to resolve dispute regarding bill where procedures established for customers to protest water bills adequately provided customer with opportunity for presentation of complaint that she was being overcharged or charged for services not rendered. D.C. Code 1973, §§ 1-1502(8), 43-1521b; D.C. Code 1981, §§ 1-1502(8), 43-1528; U.S.C. Const.Amend. 14. *Bryant v. Barry*, 456 A.2d 1252, 1983 D.C. App. LEXIS 341 (1983).

Where District of Columbia informed customer of procedures she could follow to protest water/sewer service bill approximately ten months before she filed action requesting trial-type hearing, due process notice requirement was satisfied. U.S. Const.Amend. 14; D.C. Code 1973, §§ 1-1502(8), 43-1521b; D.C. Code 1981, §§ 1-1502(8), 43-1528. *Bryant v. Barry*, 456 A.2d 1252, 1983 D.C. App. LEXIS 341 (1983).

In order for a matter to be a "contested case" within the meaning of the District of Columbia Administrative Procedure Act, it must involve a trial type hearing that is required either by statute or by constitutional right. D.C. Code § 1-1502(8). *Capitol Hill Restoration Soc. v. Moore*, 410 A.2d 184, 1979 D.C. App. LEXIS 531 (1979).

Under the District of Columbia Administrative Procedure Act, "contested case" status generally depends on whether agency proceeding is adjudicatory in nature. D.C. Code §§ 1-1501 et seq., 1-1502(8), (8)(B), 1-1509, 1-1509(a, c, e), 1-1510. *Wells v. District of Columbia Board of Education*, 386 A.2d 703, 1978 D.C. App. LEXIS 380 (1978).

Phrase "after a hearing" as used in statute defining a "contested case" as meaning a proceeding in which the legal rights and privileges of specific parties are required to be determined after a hearing means after a trial-type hearing where such is implicitly required by either the organic act or constitutional right. D.C. Code §§ 1-1502(8), 1-1510. *Chevy Chase Citizens Asso. v. District of Columbia Council*, 327 A.2d 310, 1974 D.C. App. LEXIS 291 (1974).

An administrative proceeding is primarily adjudicatory and therefore governed by "contested case" procedural requirements if it is concerned basically with weighing particular information and arriving at a decision directed at the rights of specific parties; on the other hand, an administrative proceeding is not subject to "contested case" procedural requirements if the administrative body is acting in a legislative capacity, making policy decisions directed toward general public. D.C. Code §§ 1-1502(8), 1-1510. *Chevy Chase Citizens Asso. v. District of Columbia Council*, 327 A.2d 310, 1974 D.C. App. LEXIS 291 (1974).

Public hearing preliminary to revision of Minimum Wage and Industrial Safety Board's

order with regard to persons employed in hotel, restaurant and allied occupations was not a "contested case" within purview of notice provisions of Administrative Procedure Act. D.C. Code §§ 1-1502(8), 1-1505(a), 1-1509, 1-1510, 36-401 et seq., 36-401(a, b), 36-407, 36-407(a), 36-409(a). *Hotel Asso. of Washington v. District of Columbia Minimum Wage & Industrial Safety Board*, 318 A.2d 294, 1974 D.C. App. LEXIS 395 (1974).

Controversy over refusal of mayor-commissioner and his designated agents to grant petitioners' request to take immediate steps to correct by appropriate action an alleged air pollution emergency in District of Columbia was not a "contested case" within purview of District of Columbia Administrative Procedure Act granting limited judicial review to District of Columbia Court of Appeals in respect to orders or decisions of a District of Columbia agency made "after a hearing before the Commissioner or the Council or before an agency" in a "contested case." D.C. Code §§ 1-1501 et seq., 1-1502(8); D.C. Code 1967, § 11-742(a)(11), Act July 30, 1968, 82 Stat. 458. *Environmental Defense Fund, Inc. v. Mayor-Commissioner of District of Columbia*, 317 A.2d 515, 1974 D.C. App. LEXIS 396 (1974).

Where a hearing resolves fact question of specific applicability, the Zoning Commission performs primarily an adjudicative function, and the proceeding falls within the contested case provision of the Administrative Procedure Act. D.C. Code §§ 1-1501 to 1-1510. *Citizens Asso. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

— Findings, contested case.

The Court of Appeals must defer to the ALJ's findings of fact in a workers' compensation action. *Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs.*, 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

The ALJ's findings of fact in a workers' compensation action are binding at all subsequent levels of review unless they are unsupported by substantial evidence, and this is true even if the record contains substantial evidence to the contrary. *Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs.*, 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

If the findings of the Director of the Department of Employment Services are not supported by substantial evidence, they cannot be sustained, and the Court of Appeals is required to set them aside. *Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs.*, 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

— In general.

Applicant's appeal to Board of Appeals and Review (BAR) pursuant to construction regulations, to challenge denial of a demolition permit

to raze building that was designated a historic landmark, was a trial-type hearing required "by law" within meaning of the definition of a "contested case" set forth in the Administrative Procedure Act (APA), as required to give the Court of Appeals jurisdiction to directly review BAR's decision. *J.C. & Assocs. v. State Bd. of Appeals & Review*, 778 A.2d 296, 2001 D.C. App. LEXIS 164 (2001).

Department of Employment Services' (DOES) denial of workers' compensation claimant's application for a change of physician did not present "contested case" within the meaning of Administrative Procedure Act; workers' compensation law did not require a hearing before decision whether to permit change is made. D.C. Code 1981, §§ 1-1502(8), 36-307(b)(4). *Renard v. District of Columbia Dep't of Empl. Servs.*, 731 A.2d 413, 1999 D.C. App. LEXIS 134 (1999).

Petitioner who complained that nightclub violated Alcohol Beverage Control Act, related regulations, and his constitutional rights when it excluded him for his failure to present identification proving he was 21 years of age or older did not have statutory or constitutional right to hearing before Alcoholic Beverage Control Board and, therefore, did not have any right of judicial review of Board's decision. D.C. Code 1981, §§ 1-1502(8), 1-1510(a), 11-722, 25-106, 25-121. *Jones v. District of Columbia Alcoholic Beverage Bd.*, 621 A.2d 385, 1993 D.C. App. LEXIS 54 (1993).

Where neither language, structure, nor history of statute shows intent to impose requirement of any kind of hearing before administrative action, fact that proceeding may involve primarily adjudicative fact will not make it "contested case" subject to judicial review. D.C. Code 1981, §§ 1-1502(8), 1-1510(a). *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

Court of Appeals had no jurisdiction over employee's discrimination claims based on personal appearance and family responsibility, despite fact that such claims were not a "contested case," within meaning of statute providing for judicial review of a decision of the mayor or an agency. D.C. Code 1981, §§ 1-1502(8)(A), 1-1510(a), 1-2553(a)(1)(D). *Lamont v. Rogers*, 479 A.2d 1274, 1984 D.C. App. LEXIS 459 (1984).

For a proceeding to constitute a "contested case" within meaning of Administrative Procedure Act, a specific statute or the Constitution must entitle a person to a hearing concerning the legal rights of the parties. D.C. Code 1981, § 1-1502(8). *District of Columbia v. Douglass*, 452 A.2d 329, 1982 D.C. App. LEXIS 464 (1982).

A matter retains its status as a "contested case" within meaning of Administrative Proce-

dure Act even if there are no disputed adjudicative facts necessitating a hearing. D.C. Code 1981, § 1-1502(8). *District of Columbia v. Douglass*, 452 A.2d 329, 1982 D.C. App. LEXIS 464 (1982).

A contemplated alley or street closing which has no legally cognizable opposition does not become a contested case within District of Columbia Administrative Procedure Act simply because other elements of a contested case may be present and, conversely, existence of opposition to a proposed governmental action, in and of itself, does not give rise to a contested case and all statutory requirements must be met. D.C. Code §§ 1-1502(8), 7-402. *Chevy Chase Citizens Asso. v. District of Columbia Council*, 307 A.2d 740, 1973 D.C. App. LEXIS 413 (1973), vacated by 309 A.2d 97 (D.C. 1973).

A proceeding before District of Columbia Council may be a "contested case" within District of Columbia Administrative Procedure Act and, if it is, an order resulting therefrom is directly reviewable in Court of Appeals. D.C. Code §§ 1-1501 to 1-1510, 7-123, 7-124, 7-401, 7-405, 11-722. *Chevy Chase Citizens Asso. v. District of Columbia Council*, 307 A.2d 740, 1973 D.C. App. LEXIS 413 (1973), vacated by 309 A.2d 97 (D.C. 1973).

— Licensure and license revocation, contested case.

Issuance or denial of a license to practice naturopathy pursuant to Healing Arts Practice Act constituted a "contested case" for purpose of Administrative Procedure Act for which direct review could be had in District of Columbia Court of Appeals. D.C. Code 1981, §§ 1-1502(8), 1-1509(a), 1-1510, 2-1301 et seq. *District of Columbia v. Douglass*, 452 A.2d 329, 1982 D.C. App. LEXIS 464 (1982).

Denial of petitioner's application for reinstatement as licensed registered nurse effectively precluded her from practicing her profession just as much as did initial revocation of her license; thus, due process clause of Fifth Amendment guaranteed petitioner right to hearing on her application for reinstatement and since application also fell within definition of "contested case," that hearing was required. D.C. Code 1978 Supp. §§ 1-1502(8), 1-1509, 47-2344; U.S. Const. Amend. 5. *Woods v. District of Columbia Nurses' Examining Bd.*, 436 A.2d 369, 1981 D.C. App. LEXIS 380 (1981).

Alcoholic Beverage Control Board's decision to grant or deny previously unsuccessful applicant's motion to file a second application for liquor license within less than one year after the prior denial is not an order in a "contested case" as such term is defined in District of Columbia Administrative Procedure Act. D.C. Code § 1-1501 et seq. *Citizens Asso. of Georgetown, Inc. v. District of Columbia Alcoholic*

Beverage Control Board, 410 A.2d 197, 1979 D.C. App. LEXIS 535 (1979).

Court of Appeals had jurisdiction over petition for review filed by hacker's license applicant who was denied license because of a felony conviction and subsequent parole status; applicant's petition presented a "contested case," although there were no issues of disputed fact, and only issue to be resolved was constitutionality of regulation prohibiting the licensure of persons convicted of specified felonies within three years preceding filing of application. D.C. Code §§ 1-1501 et seq., 1-1502(8). *Debruhl v. District of Columbia Hackers' License Appeal Board*, 384 A.2d 421, 1978 D.C. App. LEXIS 440 (1978).

Driver's license revocation proceeding is a "contested case" and, therefore, is controlled by Administrative Procedure Act. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1504(b). *Quick v. Department of Motor Vehicles*, 331 A.2d 319, 1975 D.C. App. LEXIS 309 (1975).

— Matter subject to subsequent trial de novo, contested case.

Decision of District of Columbia Council, pursuant to the Street Readjustment Act, to close portion of street and, once closed, to authorize the surveyor to convey title to the abutting landowners for development purposes did not constitute a "contested case" within meaning of the Administrative Procedure Act; in determining whether it should close the street the Council was exercising legislative discretion based on primarily legislative facts; also, Council's decision regarding compensation, though primarily adjudicatory, did not fall within the "contested case" definition since it was subject to trial de novo in Superior Court. D.C. Code §§ 1-1502(8), 1-1510, 7-401, 7-404, 7-405. *Chevy Chase Citizens Asso. v. District of Columbia Council*, 327 A.2d 310, 1974 D.C. App. LEXIS 291 (1974).

— Prisons and prisoners, contested case.

Convicted prisoners have no absolute constitutional right to unrestricted visitation and, thus, prisoner and his wife could not claim that constitutional right to visitation gave rise to protected liberty interest. U.S.C. Const.Amends. 5, 14. *Robinson v. Palmer*, 619 F. Supp. 344, 1985 U.S. Dist. LEXIS 17014 (1985).

Prisoner may acquire protected liberty interest by virtue of official policy statements or regulations duly promulgated by administrators of particular institution at which prisoner is confined, and such may occur when state creates protected liberty interest by placing substantive limitations on official discretion. U.S.C. Const.Amends. 5, 14. *Robinson v. Palmer*, 619 F. Supp. 344, 1985 U.S. Dist. LEXIS 17014 (1985).

Due process liberty interest did not require that prisoner's wife be provided hearing prior to invocation of correctional facility's policy permitting sanctions, including permanent suspension of visitation, for attempt to bring contraband into facility. U.S. Const.Amends. 5, 14. *Robinson v. Palmer*, 619 F. Supp. 344, 1985 U.S. Dist. LEXIS 17014 (1985).

Proceeding before prison housing board which resulted in prisoner being transferred to maximum security facility was not a contested case subject to review under the Administrative Procedure Act. D.C. Code 1981, §§ 1-1510(a), 11-722. *Singleton v. District of Columbia Dep't of Corrections*, 596 A.2d 56, 1991 D.C. App. LEXIS 225 (1991).

— Quasi-legislative or quasi-judicial determinations, contested case.

Despite general language of District of Columbia Administrative Procedure Act relating to procedures to follow in contested cases, fact that statute provides a right of hearing is not dispositive of question of whether proceeding is a contested case; question is whether required hearing is in essence adjudicatory or legislative in nature. D.C. Code §§ 1-1502(8), 5-711; 5 U.S.C. § 554. *L'Enfant Plaza Properties, Inc. v. District of Columbia Redevelopment Land Agency*, 564 F.2d 515, 1977 U.S. App. LEXIS 12078 (C.A.D.C. 1977).

To meet jurisdictional requirement that Court of Appeals review only decisions and orders of District of Columbia agencies rendered in "contested cases," hearings must be adjudicatory rather than legislative in nature. D.C. Code 1981, § 11-722. *United States v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 995, 1994 D.C. App. LEXIS 50 (1994).

Absent explicit or implicit statutory requirement of any hearing at all, fact that proceeding may involve primarily adjudicative facts will not make it contested case for purposes of permitting direct review under Administrative Procedure Act (APA). D.C. Code 1981, § 11-722. *United States v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 995, 1994 D.C. App. LEXIS 50 (1994).

When hearing is provided for, but type of hearing is in doubt, analysis of nature of issues as adjudicatory or rulemaking may be determinative of whether decision arose out of contested case so as to permit judicial review under Administrative Procedure Act (APA). D.C. Code 1981, § 11-722. *United States v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 995, 1994 D.C. App. LEXIS 50 (1994).

Some agency action, including dismissal of discrimination complaint under statute providing Office of Human Rights (OHR) with discretion to dismiss complaints based upon administrative convenience, may be unreviewable by Court of Appeals, even though it may errone-

ously deprive complainant of trial-type administrative hearing. D.C. Code 1981, §§ 1-1502(8), 1-2556(a). *Timus v. District of Columbia Dep't of Human Rights*, 633 A.2d 751, 1993 D.C. App. LEXIS 273 (1993).

"Quasi-judicial process," which indicates that "contested case" exists for purposes of applicability of District of Columbia Administrative Procedure Act (DCAPA), consists of trial-type hearing which is statutorily or constitutionally compelled. D.C. Code 1981, § 1-1501 et seq. *Timus v. District of Columbia Dep't of Human Rights*, 633 A.2d 751, 1993 D.C. App. LEXIS 273 (1993).

The principal manifestation of a "contested case," within meaning of review provisions of Administrative Procedure Act of District of Columbia, is its character as a quasi-judicial process based upon particular facts and information, and immediately affecting interests of specific parties in proceeding. D.C. Code §§ 1-1501 et seq., 1-1502(8). *Debruhl v. District of Columbia Hackers' License Appeal Board*, 384 A.2d 421, 1978 D.C. App. LEXIS 440 (1978).

Where a proceeding by a quasi-legislative body is concerned primarily with the immediate rights, duties, or privileges of specific parties instead of with general policy of future applicability, such proceeding falls within the "contested case" provisions of the Administrative Procedure Act. D.C. Code §§ 1-1502(8), 1-1510. *Chevy Chase Citizens Assn. v. District of Columbia Council*, 327 A.2d 310, 1974 D.C. App. LEXIS 291 (1974).

The principal manifestation of a "contested case," within meaning of review provisions of Administrative Procedure Act of District of Columbia, is its character as a quasi-judicial process based on particular facts and information, and immediately affecting the interests of specific parties in the proceeding. D.C. Code §§ 1-1501 to 1-1510. *Citizens Assn. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

When a proceeding before an agency assumes primarily a quasi-judicial nature, the proceeding constitutes a contested case within meaning of review provisions of the District of Columbia Administrative Procedure Act. D.C. Code §§ 1-1501 to 1-1510. *Citizens Assn. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

— Selection or tenure public officer or employee, contested case.

There was no basis to conclude that because tenure of former dean of college at public university, who was faculty member, had different origin from tenure granted under general faculty tenure regulations, that it was of different species so as to render collective bargaining agreement (CBA), and reduction in force (RIF) under CBA, inapplicable to former dean, where

university regulations did not distinguish between grants of tenure for deans and grants of tenure under traditional faculty review process, and in fact, regulation that set forth rights, privileges, and responsibilities of tenured professors only generally referred to tenured faculty, which suggested that two different types of tenure were identical in all but origin. *Hahn v. Univ. of the Dist. of Columbia*, 789 A.2d 1252, 2002 D.C. App. LEXIS 7 (2002).

Worker who, at time of acts of discrimination and filing of complaint, was employed by Department of Public and Assisted Housing (DPAH), which was subsequently abolished and District of Columbia Housing Authority (DCHA) created in its stead, was employee of the District within meaning of contested case exception, providing that petition for review of decision pertaining to selection of District employee must be filed in Superior Court in first instance. D.C. Code 1981, § 1-1502(8)(B). *District of Columbia Hous. Auth. v. District of Columbia Dep't of Human Rights*, 733 A.2d 338, 1999 D.C. App. LEXIS 154 (1999).

Decision to dismiss an employee constitutes tenure decision under statutory definition in that dismissal terminates employee's tenure. D.C. Code 1981, § 1-1502(8). *Kennedy v. Barry*, 516 A.2d 176, 1986 D.C. App. LEXIS 452 (1986).

Court of Appeals did not have jurisdiction over petitioner's consolidated petitions arising out of his discharge from fire department under statute which provides jurisdiction for contested cases in that statute excludes jurisdiction over contested cases which involve tenure decisions regardless of whether dismissal occurred in course of day-to-day exercise of personnel authority by an agency or resulted from enforcement of regulations whose validity was being challenged. D.C. Code 1981, §§ 1-1502(8), (8)(B), 1-1510. *Kennedy v. Barry*, 516 A.2d 176, 1986 D.C. App. LEXIS 452 (1986).

Employee's sexual discrimination and retaliation claims were subject to a subsequent *de novo* trial under Title VII of the Civil Rights Act of 1964, and thus, did not constitute a "contested case" entitling employee to judicial review of decision of the city administrator affirming a hearing officer's dismissal of her complaints for alleged failure to show probable cause to believe that a violation of the human rights law had occurred. D.C. Code 1981, §§ 1-1502(8), 1-1510(a); Civil Rights Act of 1964, §§ 703(a)(1), 704(a), 706(a), as amended, 42 U.S.C. §§ 2000e-2(a)(1), 2000e-3(a), 2000e-5(b). *Lamont v. Rogers*, 479 A.2d 1274, 1984 D.C. App. LEXIS 459 (1984).

Absent any claim by employee for compensatory damages, promotion and back pay, purported disparity in available remedies under the human rights law and Title VII of the Civil Rights Act of 1964 made no difference to a

determination that employee's sexual discrimination and retaliation claims were cognizable under Title VII and that thus, employee's claims did not constitute a "contested case," for purposes of judicial review of decision of the city administrator affirming dismissal of employee's claims by the Director of Equal Employment Opportunity. D.C. Code 1981, §§ 1-1502(8)(A), 1-1510(a), 1-2553(a)(1)(D); Civil Rights Act of 1964, §§ 701 et seq., 703(a)(1), 704(a), as amended, 42 U.S.C. §§ 2000e-1 et seq., 2000e-2(a)(1), 2000e-3(a). *Lamont v. Rogers*, 479 A.2d 1274, 1984 D.C. App. LEXIS 459 (1984).

Since no trial-type hearing was required as respects employee's claims of retaliation and that she had been discriminated against on basis of sex, personal appearance, and family responsibilities, either by organic act or constitutional right, employee's claim did not constitute a "contested case," for purposes of judicial review of city administrator's decision affirming dismissal of her complaint by the Director of Equal Employment Opportunity. D.C. Code 1981, §§ 1-1502(8), 1-1510(a). *Lamont v. Rogers*, 479 A.2d 1274, 1984 D.C. App. LEXIS 459 (1984).

Disciplinary proceeding before police trial board involves tenure of employee of District of Columbia within meaning of District of Columbia Administrative Procedure Act, which specifically excludes any matter involving "the selection or tenure of an officer or employee of the District" from definition of term "contested case" for purpose of appellate review. D.C. Code 1981, §§ 1-1501 et seq., 1-1502(8)(B). *Kegley v. District of Columbia*, 440 A.2d 1013, 1982 D.C. App. LEXIS 294 (1982).

Under District of Columbia Administrative Procedure Act, any matter involving "the selection or tenure of an officer or employee of the District" is not directly reviewable by Court of Appeals. D.C. Code 1981, §§ 1-1501 et seq., 1-1502(8)(B). *Kegley v. District of Columbia*, 440 A.2d 1013, 1982 D.C. App. LEXIS 294 (1982).

Under provisions of District of Columbia Administrative Procedure Act giving District of Columbia Court of Appeals jurisdiction to review police department's decision in a "contested case," which did not include the "selection or tenure of an officer or employee of the District," police department's determination that police officers were not entitled to administrative leave was a decision of day-to-day government personnel management encompassed within statutory term "selection or tenure," and thus decision was not a "contested case" subject to review by District of Columbia Court of Appeals. D.C. Code §§ 1-1501 et seq. 1-1502(8). *Money v. Cullinane*, 392 A.2d 998, 1978 D.C. App. LEXIS 324 (1978).

Exclusion of employee "selection or tenure" matters from definition of a "contested case" reviewable by courts encompasses personnel decisions transferring employees within agency. D.C. Code §§ 1-1501 et seq., 1-1502(8), (8)(B). *Wells v. District of Columbia Board of Education*, 386 A.2d 703, 1978 D.C. App. LEXIS 380 (1978).

A discriminatory employment practices proceeding brought by a District of Columbia employee is not a "contested case" within meaning of the Administrative Procedure Act, and hence, is not subject to direct review by District of Columbia Court of Appeals; following enactment of Equal Employment Opportunity Act of 1972 to include government employees a District employee has the right to bring a civil action in federal court following pursuit of his administrative remedies through the appropriate local and federal commissions. D.C. Code §§ 1-1501 et seq., 1-1502(8); Civil Rights Act of 1964, §§ 701 et seq., 703, 706(a, b, e) as amended 42 U.S.C. §§ 2000e et seq., 2000e-5(b, c), (f)(1). *O'Neill v. District of Columbia Office of Human Rights*, 355 A.2d 805, 1976 D.C. App. LEXIS 521 (1976).

Proceeding before the Board of Appeals and Review to review order of retirement board involuntarily separating petitioner from police department for disability not contracted or aggravated by performance of duty was "contested case," to which all of the procedures set forth in the pertinent section of the Administrative Procedure Act were applicable. D.C. Code §§ 1-1501 et seq., 1-1509, 4-526. *Brewington v. District of Columbia Board of Appeals & Review*, 287 A.2d 532, 1972 D.C. App. LEXIS 347 (1972).

Decisions of retirement board are not excepted from judicial review notwithstanding statute excluding, from definition of "contested case" which may be subject of review, selection or tenure of an officer or employee of the District. D.C. Code §§ 1-1502(8)(B), 1-1510, 4-526, 4-527, 4-533. *Johnson v. Board of Appeals & Review*, 282 A.2d 566, 1971 D.C. App. LEXIS 209 (1971), writ of certiorari denied by 405 U.S. 955, 92 S. Ct. 1175, 31 L. Ed. 2d 232, 1972 U.S. LEXIS 3495 (1972).

Disciplinary proceeding before Metropolitan Police Special Trial Board wherein officer, who was charged with conduct unbecoming an officer and with untruthful statements in relation to his official duties, was determined to be guilty of one specification and was fined involved officer's tenure as an employee, and thus, under Administrative Procedure Act, Court of Appeals did not have jurisdiction to review decision whereby Commissioner of district approved findings and recommendation of Board. D.C. Code §§ 1-1501 to 1-1510, 1-1502(8), (8)(B), 4-121, 4-122. *Matala v. Wash-*

ington, 276 A.2d 126, 1971 D.C. App. LEXIS 301 (1971).

— **Zoning and planning determinations, contested case.**

Statutory right to a hearing before modification of project area redevelopment plan does not automatically confer "contested case" status on administrative proceeding for purposes of subjecting proceeding to "contested case" procedural safeguards of District of Columbia Administrative Procedures Act; critical issue is whether hearing is adjudicative or legislative in nature. D.C. Code §§ 1-1502(8), 1-1509, 5-711. *Hoerber v. District of Columbia Redevelopment Land Agency*, 412 F. Supp. 211, 1976 U.S. Dist. LEXIS 15308 (1976), reversed by 564 F.2d 515, 184 U.S. App. D.C. 30, 1977 U.S. App. LEXIS 12078 (1977).

Proceeding by the District of Columbia city council to determine whether modifications of project area redevelopment plan should be permitted was quasi legislative and not a "contested case" and thus not subject to "contested case" procedural safeguards of the District of Columbia Administrative Procedures Act. D.C. Code §§ 1-1502(8), 1-1509, 5-711. *Hoerber v. District of Columbia Redevelopment Land Agency*, 412 F. Supp. 211, 1976 U.S. Dist. LEXIS 15308 (1976), reversed by 564 F.2d 515, 184 U.S. App. D.C. 30, 1977 U.S. App. LEXIS 12078 (1977).

Proceedings held under the District of Columbia zoning commission's rules of practice, resulting in down-zoning of area, were not a "contested case" within meaning of Administrative Procedure Act, but were adversary in nature and equity could be invoked. U.S. Const. Amend. 5; 5 U.S.C. § 501 et seq. *Ruppert v. Washington*, 366 F. Supp. 683, 1973 U.S. Dist. LEXIS 14560 (1973).

Extension of validity of planned unit development (PUD) order was simply post-hearing aspect of original PUD hearing, and thus was a contested case which was directly appealable to Court of Appeals. D.C. Mun.Reg. title 11, § 3022.1. *Hotel Tabard Inn v. District of Columbia Zoning Comm'n*, 661 A.2d 150, 1995 D.C. App. LEXIS 133 (1995).

Proceedings before Board of Zoning Adjustment (BZA) are "contested cases" and are therefore subject to requirements of Administrative Procedure Act. D.C. Code 1981, §§ 1-1501 to 1-1510. *Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1993 D.C. App. LEXIS 318 (1993).

Board of Zoning Adjustment order approving university's plan for campus development during 15-year period had sufficient attributes of finality to permit appellate review; order was consummation of plan approval process and made clear that all future applications for spe-

cial exceptions would be measured for their consistency with plan, regardless of whether they were in special purpose districts or in residential zoning districts. D.C. Code 1981, §§ 1-1501 et seq., 1-1502(11), 1-1510(a). *Levy v. District of Columbia Bd. of Zoning Adjustment*, 570 A.2d 739, 1990 D.C. App. LEXIS 36 (1990).

Because hotel owner did not initially invoke the appellate jurisdiction of the Board of Appeals and Review over revocation by the Department of Licenses, Investigations, and Inspections of a permit for a neon sign atop his hotel, Court of Appeals had to dismiss, for lack of jurisdiction, that part of hotel owner's petition for review challenging the Department's revocation of the permit; in declining to appeal the Department's revocation to the Board, hotel owner failed to create a "contested case" as to that issue. D.C. Code 1981, §§ 1-1502(8), 1-1509, 1-1510. *Auger v. D.C. Bd. of Appeals & Review*, 477 A.2d 196, 1984 D.C. App. LEXIS 370 (1984).

Citizens' association did not have property interest which merited constitutional protection and required trial-type hearing prior to decision to grant either preliminary or final approval to application for construction permit allowing union to build on vacant land in historic area of District of Columbia based on either reduction of property values within historic district or permanent damage to historic character of designated neighborhood. D.C. Code 1981, §§ 5-1001 et seq., 5-1007. *Dupont Circle Citizens Asso. v. Barry*, 455 A.2d 417, 1983 D.C. App. LEXIS 288 (1983).

Where government action was approval of construction permit for building which had been subject to extensive design review so as to harmonize it with neighborhood architecture and historic area of District of Columbia, harm allegedly suffered by citizens' association by granting of application was only speculative diminution in property values and alleged blight on character of historic district and did not command procedural safeguards beyond those already provided by Historic Landmark and Historic District Protection Act. D.C. Code 1981, §§ 5-1001 et seq., 5-1007. *Dupont Circle Citizens Asso. v. Barry*, 455 A.2d 417, 1983 D.C. App. LEXIS 288 (1983).

Approval of a preliminary application for a planned unit development was a contested case under the District of Columbia's Administrative Procedure Act and is properly reviewable as a final order. D.C. Code § 1-1510. *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

Restraints of District of Columbia Administrative Procedure Act and full range of due process protections necessary to an adversary adjudication were not applicable to rulemaking proceedings before the Zoning Commission.

D.C. Code §§ 1-1501 et seq., 5-413 et seq. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

For purpose of judicial review, proceeding resulting in rezoning of 2.2-acre tract of land in the District of Columbia was a "contested case" where not only did the Zoning Commission treat the proceeding as such under its own rules but in an earlier case involving precisely the same applicant and the same parcel the court specifically held that proceeding before the Commission constituted a contested case and matter involved specific evidence concerning a single parcel of property and resolution did not depend on broad legislative policy judgments. D.C. Code § 1-1502(8). *Capitol Hill Restoration Soc. v. Zoning Com.*, 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

Even though zoning generally is of a quasi-legislative nature, some zoning actions nevertheless constitute contested cases subject to judicial review. D.C. Code § 1-1502(8). *Capitol Hill Restoration Soc. v. Zoning Com.*, 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

Controversy which arose out of zoning commission's actions in granting change in zoning so as to permit townhouse development, which action followed an adjudicatory hearing, was a "contested case" so that Court of Appeals had jurisdiction to review the action. D.C. Code § 1-1510. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Court of Appeals has jurisdiction to review decisions of the Zoning Commission in accordance with the Administrative Procedure Act, limited only to those decisions or orders entered in contested cases. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1510, 11-722. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

When Zoning Commission exercised its authority to determine needs of area by denying without public hearing a proposed amendment to zoning maps to change zoning classification of property the Commission was acting legislatively and was not subject to the "contested case" provisions of Administrative Procedure Act, with the result that such decision was not subject to direct review by the Court of Appeals, despite contention of property owner that mere submission of proposed amendment, and the subsequent rejection of same, constituted a "hearing" required by law, and thus was subject to review. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1510, 5-415, 11-722. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

Application for special exception to allow construction in residential zone of private

school for kindergarten and elementary school age children resulted in a "contested case" within meaning of the District of Columbia Administrative Procedure Act. D.C. Code §§ 1-1501 et seq., 1-1509. *Rose Lees Hardy Home & School Asso. v. District of Columbia Bd. of Zoning Adjustment*, 324 A.2d 701, 1974 D.C. App. LEXIS 261 (1974).

Where the Zoning Commission sits in a legislative capacity, making a policy decision directed toward the general public, its proceeding is without the contested case provision of the Administrative Procedure Act, as regards judicial review. D.C. Code §§ 1-1501 to 1-1510. *Citizens Asso. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

A proceeding before the Zoning Commission on amendments relating to an area of a city lacks the specificity of subject matter and result, indicative of an adjudicatory proceeding; the proceeding is a quasi-legislative hearing conducted for the purpose of obtaining facts and information, and views of the public pertinent to the resolution of a policy decision, and thus, is not a contested case within the judicial review provisions of the Administrative Procedure Act. D.C. Code §§ 1-1501 to 1-1510. *Citizens Asso. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

Proceedings before Zoning Commission on proposed interim amendments to zoning classification of area of city to preserve status quo of area as one of historical interest did not constitute a contested case within the Administrative Procedure Act subject to direct judicial review in the District of Columbia Court of Appeals; thus, that court would not issue writ of mandamus compelling Commission to publish notice of a public hearing at which proposed amendments would be considered. D.C. Code §§ 1-1501 to 1-1510. *Citizens Asso. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

Proceeding involving application for approval of planned unit development was a "contested case" within the meaning of the Administrative Procedure Act and procedures provided therein relating to standards for hearing must be complied with. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1509. *Capitol Hill Restoration Soc. v. Zoning Com.*, 287 A.2d 101, 1972 D.C. App. LEXIS 339 (1972).

Order.

Rental Housing Commission's ruling on landlord's request for substantial hardship rent increase was not final order, subject to immediate judicial review, in view of Commission's adherence to its prior remand of case to rent administrator for further findings; instead, tenants' entitlement to review ripened only when

rent administrator issued its decision on remand. D.C. Code 1981, §§ 1-1502(11), 1-1510, 45-2522(a). *Tenants of 1255 N.H. Ave. v. District of Columbia Rental Hous. Comm'n*, 647 A.2d 70, 1994 D.C. App. LEXIS 153 (1994).

Tenants' request for judicial review of decision of Rental Housing Commission granting substantial hardship rent increase to landlord was not subject to dismissal for failure of tenants to appeal rent administrator's remand decision to Commission, as Commission had already resolved all other issues in case and remanded issues were resolved by stipulation, so there was no adverse ruling from which tenants could appeal to Commission, and second administrative appeal would have been altogether futile. D.C. Code 1981, §§ 1-1502(11), 1-1510, 45-2522. *Tenants of 1255 N.H. Ave. v. District of Columbia Rental Hous. Comm'n*, 647 A.2d 70, 1994 D.C. App. LEXIS 153 (1994).

Ordinarily order remanding case to administrative agency is not final order. *Warner v. District of Columbia Dep't of Employment Services*, 587 A.2d 1091, 1991 D.C. App. LEXIS 59 (1991).

"Remand order" of director of Department of Employment Services, which stated that "case" was remanded to hearing examiner to make findings on retaliatory discharge claim, was not final reviewable order; whole subject matter arising from plaintiff's injury had not been decided, more than ministerial act remained to be done by hearing examiner, and plaintiff made no claim of irreparable harm or clear error of law that would overcome interests of judicial economy and efficiency in avoiding piecemeal appeals. *Warner v. District of Columbia Dep't of Employment Services*, 587 A.2d 1091, 1991 D.C. App. LEXIS 59 (1991).

To be considered final, and to trigger right of appellate review, administrative order in contested case must impose obligation, deny right, or fix some legal relationship as consummation of administrative process. D.C. Code 1981, §§ 1-1501 et seq., 1-1502(11), 1-1510(a). *Levy v. District of Columbia Bd. of Zoning Adjustment*, 570 A.2d 739, 1990 D.C. App. LEXIS 36 (1990).

Even when consent to proposed settlement is not unanimous, agency must consider proposal on its merits as possible basis for agency's order. D.C. Code 1981, §§ 1-1502(8), 1-1509(a). *Proctor v. District of Columbia Rental Housing Com.*, 484 A.2d 542, 1984 D.C. App. LEXIS 550 (1984).

Party.

Fact that one member of organization sent a letter to the zoning commission stating that she would like to testify before the zoning commission in opposition and that member of the organization sent a letter on behalf of the organization asking that the hearing be de-

ferred was not sufficient to comply with requirements of the zoning commission for the organization to become a party. *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

Rental Accommodations Commission is precluded from imposing sanction on a person who has not been made a party to the complaint being heard by the Commission and who has not been afforded the procedural guarantees of the Administrative Procedure Act and Commission regulation. D.C. Code §§ 1-1502(10), 1-1509. *Ammerman v. District of Columbia Rental Accommodations Com.*, 375 A.2d 1060, 1977 D.C. App. LEXIS 350 (1977).

Where one partner was never named as a party in tenants' petition charging exaction of excessive rent in violation of Rental Accommodations Act and was not given notice of hearing on the petition or an opportunity to be heard in his own behalf, imposition of \$50 fine was improper; statutory notice provision relating to partnerships was inapplicable since neither the partnership nor general partner was named as a party to the proceeding. D.C. Code §§ 1-1502(10), 1-1509, 41-311. *Ammerman v. District of Columbia Rental Accommodations Com.*, 375 A.2d 1060, 1977 D.C. App. LEXIS 350 (1977).

In deciding to close a street, District of Columbia Council has discretion to consider ordering compensation from abutting owners, considering all circumstances affecting nearby property of abutters and/or nonabutters, and if an abutting owner feels that compensation has been assessed too high or should a nearby property owner consider himself damaged by the closing, either of such a "party interested" may submit an objection to the closing following which the Council is obliged to institute a reverse condemnation proceeding. D.C. Code §§ 1-1502(8), 7-404, 7-405. *Chevy Chase Citizens Asso. v. District of Columbia Council*, 307 A.2d 740, 1973 D.C. App. LEXIS 413 (1973), vacated by 309 A.2d 97 (D.C. 1973).

Person or interested person.

Fact that tenants association was not a party in Zoning Commission proceedings that led to issuance of order granting university permission to modify a previously approved Planned Unit Development did not bar association from petitioning Court of Appeals for review of order. *York Apts. Tenants Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1079, 2004 D.C. App. LEXIS 405 (2004).

Where notice of proposed rule as to public assistance payments did not state where and in what way, orally or in writing, interested persons were to submit their views and specified only that welfare payment proposal was being considered without indicating in any way that

commissioner would take his final action on proposal in less than 30 days, the notice did not provide adequate information so as to afford interested persons opportunity to submit their views on proposal before it was adopted and did not meet statutory requirements of District of Columbia Administrative Procedure Act. Social Security Act, §§ 1 et seq., 2, 401 et seq., 402, 402(a)(23), 1001 et seq., 1002, 1401 et seq., 1402 as amended 42 U.S.C. §§ 301 et seq., 302, 601 et seq., 602, 602(a)(23), 1201 et seq., 1202, 1351 et seq., 1352; D.C. Code §§ 1-1502(6), 1-1505(a), 1-1506(c). *Junghans v. Department of Human Resources*, 289 A.2d 17, 1972 D.C. App. LEXIS 356 (1972).

Interested persons are not afforded an opportunity to comment on proposed rules within meaning of District of Columbia Administrative Procedure Act if general public does not know where or how to submit the comments. D.C. Code §§ 1-1502(6), 1-1505(a), 1-1506(c). *Junghans v. Department of Human Resources*, 289 A.2d 17, 1972 D.C. App. LEXIS 356 (1972).

Under District of Columbia Administrative Procedure Act, in order that interested persons be afforded opportunity to be heard on proposed rule, general public must be advised of current status of proposed rule as it stands before rule maker and Congress intended notice of a proposed rule to inform public that rule maker would either wait 30 days before taking final action on pending proposal or was contemplating taking final action in less than 30 days. D.C. Code §§ 1-1502(6), 1-1505(a), 1-1506(c). *Junghans v. Department of Human Resources*, 289 A.2d 17, 1972 D.C. App. LEXIS 356 (1972).

Regulation.

Regulations promulgated by the District of Columbia's Health Planning and Development Agency pursuant to the District of Columbia Certificate of Need Act [D.C. Code 1981, § 32-301 et seq.] were not invalid for Agency's failure to file a statement of basis and purposes considered in their formulation; absence of requirement of a statement of basis and purpose from District of Columbia Administrative Procedure Act [D.C. Code 1981, § 1-1506 et seq.] was reflective of a deliberate policy choice by Congress and City Council of the District of Columbia. *District of Columbia Hosp. Asso. v. Barry*, 498 A.2d 216, 1985 D.C. App. LEXIS 484 (1985).

Regulations regarding emergency assistance were invalid where they were never published in D.C. Register and were never submitted to city council for approval, and post hoc publication of those regulations in Register did not cause them to acquire validity. D.C. Code §§ 1-1502(6), 1-1505(a), 1-1506(c). *Rorie v. District of Columbia Dep't of Human Resources*, 403 A.2d 1148, 1979 D.C. App. LEXIS 415 (1979).

Relief.

Upon court's finding that District of Colum-

bia's unpublished policies regarding disability benefit termination, suspension or modification process were void for failure to comply with District of Columbia Administrative Procedure Act (DCAPA), remedy available for aggrieved parties was not limited to remand to the agency for rule-making; rather, court would order that the disability compensation benefits of all members of beneficiary class be reinstated until individualized termination, modification, or suspension determinations could be made under validly promulgated rules. *Lightfoot v. District of Columbia*, 339 F.Supp.2d 78, 2004 U.S. Dist. LEXIS 21140 (2004), reversed by, remanded by 448 F.3d 392, 371 U.S. App. D.C. 96, 2006 U.S. App. LEXIS 12597 (2006).

Superior court had jurisdiction to review Contract Appeals Board's (CAB) decisions in bid protest, and thus, superior court also possessed power under All Writs Act to issue temporary relief to disappointed bidder, even though CAB had not yet issued decision. D.C. Code 1981, §§ 1-233(a)(4), 1-1181.1 to 1-1192.6, 1-1189.3, 1-1502(8), 1-1510(a), 11-921; 18 U.S.C. §§ 1651, 1651(a). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Final action of an agency must be similar enough to original notice of proposed rulemaking so that all interested parties are assured opportunity to protect their interests by contributing to administrative process. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

Rule.

Disability compensation program's unwritten "best practices" and unpublished procedures to guide disability benefit termination, suspension or modification process were clearly "rules" within meaning of District of Columbia Administrative Procedure Act (DCAPA) and had to be promulgated through notice-and-comment rulemaking. *Lightfoot v. District of Columbia*, 355 F.Supp.2d 414, 2005 U.S. Dist. LEXIS 1195 (2005).

District of Columbia's unwritten "best practices" and unpublished procedures to guide disability benefit termination, suspension or modification process amounted to rules governing the disability compensation program's administration, and, therefore District of Columbia Administrative Procedure Act (DCAPA) required publication for notice and comment purposes. *Lightfoot v. District of Columbia*, 339 F.Supp.2d 78, 2004 U.S. Dist. LEXIS 21140 (2004), reversed by, remanded by 448 F.3d 392, 371 U.S. App. D.C. 96, 2006 U.S. App. LEXIS 12597 (2006).

School district's "guideline announcement," under which payments to private providers of special education services were determined in

part by attendance records of individual students, was "rule" under District of Columbia law, which could not be promulgated without providing requisite notice and comment period; announcement implemented new policy of general applicability that fundamentally changed district's payment practices. *Petties v. District of Columbia*, 298 F.Supp.2d 60, 2003 U.S. Dist. LEXIS 23657 (2003).

Where closing of medical clinic in District of Columbia was an implementation of policy, it constituted a "rule" within the District of Columbia Administrative Procedure Act; thus, since the finalized decision to close clinic was made no later than four days after publication of proposed closing of clinic, instead of waiting 30 days from publication of notice before taking final action and there was no indication in the notice of intention to take action in less than 30 days, the closure violated the District of Columbia Code. D.C. Code §§ 1-1502(6), 1-1505(a), 1-1510. *Spivey v. Barry*, 501 F. Supp. 1093, 1980 U.S. Dist. LEXIS 16285 (1980), reversed by, remanded by 665 F.2d 1222, 214 U.S. App. D.C. 404, 1981 U.S. App. LEXIS 17915 (1981).

"Directive" unilaterally promulgated by Trustee for Offender Supervision, requiring Board of Parole to issue parole violator warrants in situations in which Board's regulations rendered that decision discretionary, was subject to requirements of District of Columbia Administrative Procedure Act (DCAPA); "directive" was statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy or to describe Board's procedure or practice requirements. D.C. Code 1981, §§ 1-1502(6), 24-205, 24-1232(b)(2); D.C. Mun. Regs. title 28, §§ 217.3, 217.6. *Teachey v. Carver*, 736 A.2d 998, 1999 D.C. App. LEXIS 196 (1999).

Internal manual of the District of Columbia Board of Elections and Ethics dealing with standard procedures for verification of initiative petitions did not contain "rules" subject to rule-making requirement of District of Columbia Administrative Procedure Act; Board had duly promulgated and published rules pertaining to initiative process, including verification rules, and manual was merely a step-by-step guideline, earmarked for Board employees or others who implemented rules. D.C. Code 1981, § 1-1502(6); D.C. Mun. Regs. title 3, § 1007. *Stevenson v. District of Columbia Bd. of Elections & Ethics*, 683 A.2d 1371, 1996 D.C. App. LEXIS 201 (1996).

Acting surveyor's interpretation of word "subdivision" in Historic Landmark and Historic District Protection Act was not "rule" for purposes of District of Columbia Administrative Procedure Act. D.C. Code 1981, §§ 5-1001 et seq., 1-1501 et seq. *Acheson v. Sheaffer*, 520 A.2d 318, 1987 D.C. App. LEXIS 279 (1987).

Whatever rule is used in District of Columbia to determine eligibility for a license to carry a handgun, it must be adopted, published, and applied according to law, and remain consistent with congressional policy. D.C. Code §§ 1-227, 1-1502, 1-1505 to 1-1507, 22-3206. *Jordan v. District of Columbia Board of Appeals & Review*, 315 A.2d 153, 1974 D.C. App. LEXIS 365 (1974).

Department of Human Resources Social Services Administration's Food Stamp Operating Manual, consisting of a reprint of the "Plan of Operation," the schedules prepared by the Food and Nutrition Service, statutory references, guidelines and interoffice procedures, forms and reports, and what is identified in a manual as "Operating Data and Standards" is neither a regulation nor a "rule" within the purview of the District of Columbia Administrative Procedure Act. D.C. Code §§ 1-1502(6), 1-1507; The Food Stamp Act of 1964, § 2 et seq., 7 U.S.C. § 2011 et seq. *Wolston v. District of Columbia Dep't of Human Resources Social Services Administration*, 291 A.2d 85, 1972 D.C. App. LEXIS 391 (1972).

Neither the regulations of the Secretary of Agriculture nor the schedules prepared by the Food and Nutrition Service are "rules" for purposes of the District of Columbia Administrative Procedure Act which the Social Services Administration of the District of Columbia Department of Human Resources was required to promulgate and publish. D.C. Code § 1-1501 et seq. *Wolston v. District of Columbia Dep't of Human Resources Social Services Administration*, 291 A.2d 85, 1972 D.C. App. LEXIS 391 (1972).

Commissioner's order directing the Department of Human Resources to set level of public assistance payments at 75% of public assistance standards, whether considered an implementing directive or prescribing policy, was a "rule" as defined by District of Columbia Administrative Procedure Act and since commissioner's order was never published in the District of Columbia register, it never became effective, and decision of Department of Human Resources to reduce petitioner's monthly public assistance payments could not stand because based on the invalid order. *Social Security Act*, §§ 1 et seq., 2, 401 et seq., 402, 402(a)(23), 1001 et seq., 1002, 1401 et seq., 1402 as amended 42 U.S.C. §§ 301 et seq., 302, 601 et seq., 602, 602(a)(23), 1201 et seq., 1202, 1351 et seq., 1352; D.C. Code §§ 1-1502(6), 1-1505(a), 1-1506(c), 1507. *Junghans v. Department of Human Resources*, 289 A.2d 17, 1972 D.C. App. LEXIS 356 (1972).

Rulemaking.

District of Columbia did not engage in "rulemaking" within context of Administrative Procedure Act by withholding 10% of AFDC

recipient's monthly grant to recoup prior overpayment, pursuant to federal regulation, and thus, uniformly applied 10% recoupment rate was effective without compliance with Act, where District failed to adopt lower rate, but merely acted pursuant to ceiling rate in federal regulation. D.C. Code 1981, §§ 1-1502(6, 7), 1-1506. *Boyd v. District of Columbia Dep't of Human Services*, 524 A.2d 744, 1987 D.C. App. LEXIS 335 (1987).

Implementation of mandatory federal directive that permits no choice other than to initiate administrative or judicial challenge, is not rule making under Administrative Procedure Act in that decision to challenge is not "fundamental policy determination." D.C. Code 1981, §§ 1-1501 et seq., 1-1506, 1-1538; Social Security Act, § 1116, as amended, 42 U.S.C. § 1316. *Hamer v. Department of Human Services, etc.*, 492 A.2d 1253, 1985 D.C. App. LEXIS 382 (1985).

Change in Department of Health Services guidelines that eliminated provision for "spend-down" of resources in determination of medic-aid eligibility was not invalid for noncompliance with requirements of Administrative Procedure Act. D.C. Code 1981, § 1-1501 et seq. *Hamer v. Department of Human Services, etc.*, 492 A.2d 1253, 1985 D.C. App. LEXIS 382 (1985).

By interpreting phrase "similar professional person" as used in zoning regulation, limiting use in district to certain named occupations or similar professional person, District of Columbia Board of Zoning Adjustment was not "rulemaking" without complying with procedural formalities required by statute but, rather, was interpreting phrase within its statutory authority, and thus substantial deference had to be accorded its interpretation. D.C. Code § 1-1502(6, 7). *Keefe Co. v. District of Columbia Board of Zoning Adjustment*, 409 A.2d 624, 1979 D.C. App. LEXIS 521 (1979).

Rulemaking is not to be shackled, in the absence of clear and specific congressional requirement, by importation of formalities developed for adjudicatory process and basically unsuited for policy rulemaking. *Citizens Asso. of Georgetown v. Zoning Com. of District of Co-*

lumbia, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

District of Columbia's letter to senator, in which District outlined its reading of regulations relevant to repair of water pipes was not "rulemaking" within meaning of Administrative Procedure Act. D.C. Code §§ 1-1501 et seq., 1-1502(6). *District of Columbia v. North Washington Neighbors, Inc.*, 367 A.2d 143, 1976 D.C. App. LEXIS 446 (1976), writ of certiorari denied by 434 U.S. 823, 98 S. Ct. 68, 54 L. Ed. 2d 80, 1977 U.S. LEXIS 2835 (1977).

Administrative Procedure Act envisioned rule making as a quasi-legislative process, and where government agency performs no legislative function but only describes or refers to regulation as it is written, procedural formalities of Administrative Procedure Act are unnecessary. D.C. Code §§ 1-1501 et seq., 1-1502(6). *District of Columbia v. North Washington Neighbors, Inc.*, 367 A.2d 143, 1976 D.C. App. LEXIS 446 (1976), writ of certiorari denied by 434 U.S. 823, 98 S. Ct. 68, 54 L. Ed. 2d 80, 1977 U.S. LEXIS 2835 (1977).

Interpretation or implementation by taxing authorities of words "full and true value" by changing debasement factor for taxation of single-family residences from 55 percent of estimated market value to 60 percent was, within meaning of District of Columbia Administrative Procedure Act, "rulemaking" such as to require publication of notice, despite contention that change was part of effort to equalize District of Columbia tax assessments as required by Constitution. D.C. Code §§ 1-1502(6, 7), 1-1507(c), 47-713. *District of Columbia v. Green*, 310 A.2d 848, 1973 D.C. App. LEXIS 370 (1973).

Sanctions.

An agency's power to impose sanctions extends only to those parties before the agency who have been afforded the required procedural guarantees with respect to the agency's proceedings; such guarantees have their roots in constitutional due process and such requirements are met only if a party is given adequate notice to prepare and present its position. D.C. Code § 1-1502(10). *Ammerman v. District of Columbia Rental Accommodations Com.*, 375 A.2d 1060, 1977 D.C. App. LEXIS 350 (1977).

§ 2-503. Establishment of procedures.

(a) The Mayor and the Council shall, for the Mayor and for each subordinate agency, establish or require each subordinate agency to establish procedures in accordance with this subchapter.

(b) Each independent agency shall establish procedures in accordance with this subchapter.

(c) The procedures required to be established by subsections (a) and (b) of this section shall include requirements of practice before the Mayor and each agency.

(Oct. 21, 1968, 82 Stat. 1205, Pub. L. 90-614, § 4; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(r), (s), 22 DCR 2051; Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), 23 DCR 9532b.)

Section references. — This section is referred to in § 11-722.

Prior Codifications. — 1981 Ed., § 1-1503. 1973 Ed., § 1-1503.

Legislative history of Law 1-19. — For

legislative history of D.C. Law 1-19, see Historical and Statutory Notes following § 2-501.

Legislative history of Law 1-96. — For legislative history of D.C. Law 1-96, see Historical and Statutory Notes following § 2-531.

CASE NOTES

ANALYSIS

In general.

Necessity for procedures.

Subpoena powers.

Zoning and planning determinations.

In general.

Injunction prohibiting nonlawyer from misrepresenting his qualifications to practice before District of Columbia agencies did not bar him from practicing before those agencies that permitted nonlawyer representation. In re Banks, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Regulations of the Rental Accommodations Office authorizing lay representation of party at agency proceedings are not ultra vires; therefore, attorney, who was not licensed in the District of Columbia, did not engage in unauthorized practice of law by appearing before the Office on behalf of clients. D.C. Code 1981, §§ 1-1501 et seq., 1-1503, 1-1509(b). *Brookens v. Committee on Unauthorized Practice of Law*, 538 A.2d 1120, 1988 D.C. App. LEXIS 48 (1988).

Necessity for procedures.

In the absence of regulations directed specifically to hacker's license revocation proceedings, those regulations which apply on their face only to appeals from denials of license applications govern revocation proceedings as well as appeal proceedings, as those threatened with suspension or revocation of governmentally bestowed license are entitled to at least same quantum of procedural protections as are those appealing from denial of a license. D.C. Code § 1-1501 et seq. *Babazadeh v. District of Columbia Hackers' License Appeal Board*, 390 A.2d 1004, 1978 D.C. App. LEXIS 554 (1978).

Especially where charged hacker is not represented by counsel in hacker's license suspension proceedings, Hackers' License Appeal Board must fashion procedures to insure that litigant is aware of full panoply of procedural rights which are his due. D.C. Code §§ 1-1509(a, b), 1-1510. *Babazadeh v. District of*

Columbia Hackers' License Appeal Board, 390 A.2d 1004, 1978 D.C. App. LEXIS 554 (1978).

Hackers' License Appeal Board's procedure failed to accord licensee protections mandated by both the Administrative Procedure Act and Board's own regulations, where licensee was given no notice of his right to inspect his file even though he was appearing pro se. D.C. Code § 1-1501 et seq. *Babazadeh v. District of Columbia Hackers' License Appeal Board*, 390 A.2d 1004, 1978 D.C. App. LEXIS 554 (1978).

Subpoena powers.

A subpoena duces tecum served upon defendant in an action commenced against it by the District of Columbia Human Relations Commission was not invalid on basis that it was issued by executive director of the Commission and that such director had not had issuing power validly delegated to him, in view of fact authorization for such delegation was in fact conferred by Reorganization Plan 5 of 1952. Reorganization Plan No. 5, 66 Stat. 824. D. C. Human Relations Com. v. National Geographic Soc., 475 F.2d 366, 1973 U.S. App. LEXIS 11668 (C.A.D.C. 1973).

It was appropriate for the District of Columbia Human Relations Commission which served upon a defendant a subpoena duces tecum to produce certain information to prove to trial court by argument, not necessarily by evidence, that its demands were proper and necessary, and burden of persuasion rested upon it, and trial court had the duty in such a case of making explicit its rulings as to relevance of items sought and burdensomeness of compliance. D. C. Human Relations Com. v. National Geographic Soc., 475 F.2d 366, 1973 U.S. App. LEXIS 11668 (C.A.D.C. 1973).

Complaint charging discrimination against minority groups depriving them of equal employment opportunities, and amendment to the complaint, and a subpoena duces tecum were not invalid based on failure of Human Relations Commission to promulgate rules of procedure as required by District of Columbia Administrative Procedure Act, where Commission promulgated and published rules of procedure during pendency of proceedings, and defendant

had not been prejudiced by delay in the publication. *D. C. Human Relations Com. v. National Geographic Soc.*, 475 F.2d 366, 1973 U.S. App. LEXIS 11668 (C.A.D.C. 1973).

Zoning and planning determinations.

Rule specifically addressing point was not required for power of board of zoning adjustment to disqualify counsel for conflict of interest. *District of Columbia Self Government and Governmental Reorganization Act*, 87 Stat. 774; 18 U.S.C. §§ 207, 207(a); ABA Code of Professional Responsibility, DR9-101(B); D.C. Code § 1-1503(c). *Brown v. District of Columbia Bd. of Zoning Adjustment*, 413 A.2d 1276, 1980 D.C. App. LEXIS 271 (1980).

While board of zoning adjustment was required to decide motion before it, for disqualification of counsel, so that board might protect integrity of its own hearings and implement public policy of deterring conflict of interest, board should in future adopt through rule making a clear and precise standard which would guide ex-government attorneys who might wish to represent clients before the board. *District of Columbia Self Government and Governmental Reorganization Act*, 87 Stat. 774; 18 U.S.C. §§ 207, 207(a); ABA Code of Professional Responsibility, DR9-101(B); D.C. Code § 1-1503(c). *Brown v. District of Columbia Bd. of Zoning Adjustment*, 413 A.2d 1276, 1980 D.C. App. LEXIS 271 (1980).

§ 2-504. Official publications.

(a) The Mayor shall cause to be published the official publications known as the *District of Columbia Register* and the *District of Columbia Municipal Regulations* pursuant to subchapter III of this chapter.

(b) All courts within the District shall take judicial notice of rules, regulations, and Council acts and resolutions published or of which notice is given in the *District of Columbia Register* or the *District of Columbia Municipal Regulations* pursuant to subchapter III of this chapter.

(c) Publication in the *District of Columbia Register* of Council acts and resolutions, regulations adopted, amended, or repealed by the District of Columbia Council and rules adopted, amended, or repealed by the Mayor or by any agency shall not be considered as a substitute for publication in 1 or more newspapers of general circulation when such publication is required by statute.

(Oct. 21, 1968, 82 Stat. 1206, Pub. L. 90-614, § 5; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(t)-(x), 22 DCR 2051; Mar. 29, 1977, D.C. Law 1-96, § 3(a), 23 DCR 9532b; Apr. 19, 1977, D.C. Law 1-120, § 2, 23 DCR 9924; Mar. 6, 1979, D.C. Law 2-153, § 6(a), 25 DCR 6960.)

Cross references. — “District of Columbia Register” defined, see § 2-601.

Section references. — This section is referred to in §§ 1-309.14, 1-606.10, 2-502, 8-1058, 11-722, and 11-1525.

Prior Codifications. — 1981 Ed., § 1-1505. 1973 Ed., § 1-1504.

Legislative history of Law 1-19. — For legislative history of D.C. Law 1-19, see Historical and Statutory Notes following § 2-501.

Legislative history of Law 1-96. — For legislative history of D.C. Law 1-96, see Historical and Statutory Notes following § 2-531.

Legislative history of Law 1-120. — Law 1-120 was introduced in Council and assigned Bill No. 1-340, which was referred to the Com-

mittee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on November 23, 1976 and December 7, 1976, respectively. Enacted without signature by the Mayor on January 1, 1977, it was assigned Act No. 1-206 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-153. — Law 2-153 was introduced in Council and assigned Bill No. 2-96, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-319 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Delayed publication.

Failure to publish.

Necessity for publication.

Presumptions and burden of proof.

Sufficiency of publication.

Delayed publication.

Complaint charging discrimination against minority groups depriving them of equal employment opportunities, and amendment to the complaint, and a subpoena duces tecum were not invalid based on failure of Human Relations Commission to promulgate rules of procedure as required by District of Columbia Administrative Procedure Act, where Commission promulgated and published rules of procedure during pendency of proceedings, and defendant had not been prejudiced by delay in the publication. *D. C. Human Relations Com. v. National Geographic Soc.*, 475 F.2d 366, 1973 U.S. App. LEXIS 11668 (C.A.D.C. 1973).

Failure to publish.

Regulations regarding emergency assistance were invalid where they were never published in D.C. Register and were never submitted to city council for approval, and post hoc publication of those regulations in Register did not cause them to acquire validity. D.C. Code §§ 1-1502(6), 1-1505(a), 1-1506(c). *Rorie v. District of Columbia Dep't of Human Resources*, 403 A.2d 1148, 1979 D.C. App. LEXIS 415 (1979).

Fact that certain of the police regulations governing applications for license to carry concealed weapon in District of Columbia had not been compiled and published as required by statute, did not require blind issuance of such a license to petitioner, who failed to satisfy such regulations. D.C. Code §§ 1-1502, 1-1505 to 1-1507, 22-3206. *Jordan v. District of Columbia Board of Appeals & Review*, 315 A.2d 153, 1974 D.C. App. LEXIS 365 (1974).

Commissioner's order directing the Department of Human Resources to set level of public assistance payments at 75% of public assistance standards, whether considered an implementing directive or prescribing policy, was a "rule" as defined by District of Columbia Administrative Procedure Act and since commissioner's order was never published in the District of Columbia register, it never became effective, and decision of Department of Human Resources to reduce petitioner's monthly public assistance payments could not stand because based on the invalid order. *Social Security Act*, §§ 1 et seq., 2, 401 et seq., 402, 402(a)(23), 1001 et seq., 1002, 1401 et seq., 1402 as amended 42 U.S.C. §§ 301 et seq., 302, 601 et seq., 602, 602(a)(23), 1201 et seq., 1202, 1351 et seq.,

1352; D.C. Code §§ 1-1502(6), 1-1505(a), 1-1506(c), 1507. *Junghans v. Department of Human Resources*, 289 A.2d 17, 1972 D.C. App. LEXIS 356 (1972).

Necessity for publication.

Whatever rule is used in District of Columbia to determine eligibility for a license to carry a handgun, it must be adopted, published, and applied according to law, and remain consistent with congressional policy. D.C. Code §§ 1-227, 1-1502, 1-1505 to 1-1507, 22-3206. *Jordan v. District of Columbia Board of Appeals & Review*, 315 A.2d 153, 1974 D.C. App. LEXIS 365 (1974).

Commissioner's order and not council's regulation fixed public assistance payments formula for District of Columbia and invalidity of commissioner's order necessarily invalidated decision of Department of Human Resources to reduce petitioner's monthly public assistance payments. *Social Security Act*, §§ 1 et seq., 2, 401 et seq., 402, 402(a)(23), 1001 et seq., 1002, 1401 et seq., 1402 as amended 42 U.S.C. §§ 301 et seq., 302, 601 et seq., 602, 602(a)(23), 1201 et seq., 1202, 1351 et seq., 1352; D.C. Code §§ 1-1502(6), 1-1505(a), 1-1506(c), 1-1507. *Junghans v. Department of Human Resources*, 289 A.2d 17, 1972 D.C. App. LEXIS 356 (1972).

Presumptions and burden of proof.

Bare assertion, albeit true, that certain gaps remained to be filled in the District of Columbia Alcoholic Beverage Control Board's published regulations to meet statutory standards was not sufficient to require setting aside Board's order granting class "C" liquor license where it was not alleged that citizens' association challenging the grant suffered in any way from lack of any particular provision. D.C. Code § 1-1501 et seq. *Citizens Assn. of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board*, 359 A.2d 295, 1976 D.C. App. LEXIS 308 (1976).

Sufficiency of publication.

A police regulation of the District of Columbia pertaining to equal employment opportunities even if not published in a compilation was properly published where a special edition of the District of Columbia register incorporated District of Columbia police regulations and such regulations were available for purchase at District of Columbia publications office. D.C. Code §§ 1-1504(a), 1-1507. *D. C. Human Relations Com. v. National Geographic Soc.*, 475 F.2d 366, 1973 U.S. App. LEXIS 11668 (C.A.D.C. 1973).

District of Columbia's police regulation governing repair of water pipes was published in accordance with Administrative Procedure Act

when such regulation was incorporated into special edition of District of Columbia Register. D.C. Code § 1-1501 et seq. District of Columbia v. North Washington Neighbors, Inc., 367 A.2d

143, 1976 D.C. App. LEXIS 446 (1976), writ of certiorari denied by 434 U.S. 823, 98 S. Ct. 68, 54 L. Ed. 2d 80, 1977 U.S. LEXIS 2835 (1977).

§ 2-505. Public notice and participation in rulemaking; emergency rules.

(a) The Mayor and each independent agency shall, prior to the adoption of any rule or the amendment or repeal thereof, publish in the District of Columbia Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) notice of the intended action so as to afford interested persons opportunity to submit data and views either orally or in writing, as may be specified in such notice. The notice shall also contain a citation to the legal authority under which the rule is being proposed. The publication or service required by this subsection of any notice shall be made not less than 30 days prior to the effective date of the proposed adoption, amendment, or repeal, as the case may be, except as otherwise provided by the Mayor or the agency upon good cause found and published with the notice.

(b) Any interested person may petition the Mayor or an independent agency requesting the promulgation, amendment, or repeal of any rule. The Mayor and each independent agency shall prescribe by rule the form for such petitions, and the procedure for their submission, consideration, and disposition. Nothing in this subchapter shall make it mandatory that the Mayor or any agency promulgate, amend, or repeal any rule pursuant to a petition therefor submitted in accordance with this section.

(c) Notwithstanding any other provision of this section, if, in an emergency, as determined by the Mayor or an independent agency, the adoption of a rule is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals, the Mayor or such independent agency may adopt such rules as may be necessary in the circumstances, and such rule may become effective immediately. Any such emergency rule shall forthwith be published and filed in the manner prescribed in subchapter III of this chapter. No such rule shall remain in effect longer than 120 days after the date of its adoption.

(Oct. 21, 1968, 82 Stat. 1206, Pub. L. 90-614, § 6; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(y), 22 DCR 2053; Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), (e), 23 DCR 9532b; Apr. 12, 2000, D.C. Law 13-91, § 167, 47 DCR 520.)

Cross references. — Adoption of children, publication of rules and regulations, see § 4-301.

Advisory neighborhood commissions, proposed actions of District government policy, prior notice required, see § 1-309.10.

Animals at large or dangerous animals, disposal after impoundment, governing rules to be adopted after prior notice and public participation, see § 8-1805.

District of Columbia Commission on Judicial Disabilities and Tenure, application of Admin-

istrative Procedure Act to commission, see § 11-1525.

Fees for select adult, continuing, and community education courses and certification programs, to be set by board of education after publication of prior notice, see § 38-1002.

Gas, electric lighting, telephone, and telecommunications companies, gross receipts tax, rulemaking authority as to, see § 47-2501.

Hazardous waste management, adoption of rules and regulations, prior notice and public participation required, see § 8-1305.

Merit system, adoption of rules and regulations, prior notice required, see § 1-604.05.

Motor vehicles and traffic, regulation of taxicabs, panel on rates and rules, required notice of intended action and opportunity to be heard, see § 50-308.

Occupational safety and health, emergency temporary rules, basis for adoption, procedure, see § 32-1109.

Publication of notice of application for grant funds, see § 47-384.

Solid waste management, paper and paper products, minimum recycled content exemption, publication of notice of intended action as to exemption, see § 8-1021.

Taxation and fiscal affairs, budget and financial management, grant application procedure, governing rules and regulations to be adopted after notice and hearing, see § 47-383.

Toll telecommunication service tax, rulemaking authority, publication of prior notice and opportunity to be heard, see § 47-3919.

University of the District of Columbia, tuition and fees, to be set by board of trustees after publication of notice, see § 38-1202.06.

Prior Codifications. — 1981 Ed., § 1-1506. 1973 Ed., § 1-1505.

Effect of amendments. — D.C. Law 13-91, in subsec. (a), inserted the second sentence.

Legislative history of Law 1-19. — For legislative history of D.C. Law 1-19, see Historical and Statutory Notes following § 2-501.

Legislative history of Law 1-96. — For legislative history of D.C. Law 1-96, see Historical and Statutory Notes following § 2-531.

Legislative history of Law 13-91. — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Editor’s notes. — Uniform Law: This section is based upon §§ 3 and 6 of the Uniform Law Commissioners’ Model State Administrative Procedure Act (1961 Act).

CASE NOTES

ANALYSIS

Due process.

Emergency rules and regulations.

In general.

Necessity for rulemaking proceedings.

Notice of rulemaking.

Publication of notice.

Sufficiency of notice.

Zoning.

Due process.

To comply with due process, decision of city to close shelters for homeless men required only that notice of planned closing and opportunity to present written comments be given since decision was legislative in nature and the homeless could have been heard in various political forums on the issue of shelter closings. U.S. Const.Amend. 5. *Williams v. Barry*, 708 F.2d 789, 1983 U.S. App. LEXIS 27110 (C.A.D.C. 1983).

A party is “subject thereto” when it is affected by the proposed rule under statute requiring agency to publish proposed rule in the District of Columbia Register unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof; the reach of “subject thereto” cannot be limited to the entities that are the direct targets of the proposed regulations. *Wash. Gas Energy Servs. v. District of Columbia PSC*, 893 A.2d 981, 2006 D.C. App. LEXIS 94 (2006).

When a new rule is established through individual adjudication, due process requires

that the agency provide notice which is reasonably calculated to inform all those whose legally protected interests may be affected by the new principle. U.S. Const.Amend. 14. *Epstein v. D.C. Dep’t of Empl. Servs.*, 850 A.2d 1140, 2004 D.C. App. LEXIS 272 (2004).

Emergency rules and regulations.

Decision by District of Columbia Water and Sewer Authority (WASA) to adopt interim rates applicable to prior beneficiaries of preferential water and sewer rates, which had been abolished by District Council through legislation, rather than to reinstate preferential rates, was necessary for the immediate preservation of public peace, health, safety, welfare, or morals, and thus, rates could be adopted as an emergency rule under District of Columbia Administrative Procedure Act (APA), without prior notification and publication. *Jubilee Hous., Inc. v. District of Columbia Water & Sewer Auth.*, 774 A.2d 281, 2001 D.C. App. LEXIS 123 (2001).

Nothing in the legislation creating District of Columbia Water and Sewer Authority (WASA), and giving it the authority to establish rates following notice and public hearing, excuses compliance with notice and hearing requirements in exigent situations. *Jubilee Hous., Inc. v. District of Columbia Water & Sewer Auth.*, 774 A.2d 281, 2001 D.C. App. LEXIS 123 (2001).

Regulations regarding emergency assistance were invalid where they were never published

in D.C. Register and were never submitted to city council for approval, and post hoc publication of those regulations in Register did not cause them to acquire validity. D.C. Code §§ 1-1502(6), 1-1505(a), 1-1506(c). *Rorie v. District of Columbia Dep't of Human Resources*, 403 A.2d 1148, 1979 D.C. App. LEXIS 415 (1979).

Evidence concerning refusal of some patrons to pay established bus fare immediately after judicial decision that transit commission's bus fare regulation was invalid and results which were likely to flow from the decision sustained determination of District of Columbia council that emergency existed and justified invocation of council's emergency procedures for purpose of enacting bus fare regulation. D.C. Code § 1-1505(c). *Hobson v. District of Columbia*, 304 A.2d 637, 1973 D.C. App. LEXIS 287 (1973).

District of Columbia council's interpretation of its regulation pertaining to adoption of emergency measures as requiring council to examine and discuss regulations before them in detail but not requiring that entire regulation, including all of its "whereases" and all of its sections be orally read to council was reasonable. D.C. Code § 1-1505(c). *Hobson v. District of Columbia*, 304 A.2d 637, 1973 D.C. App. LEXIS 287 (1973).

District of Columbia council's emergency procedure regulations do not require that an emergency regulation be published in District of Columbia register before becoming effective. D.C. Code § 1-1505(c). *Hobson v. District of Columbia*, 304 A.2d 637, 1973 D.C. App. LEXIS 287 (1973).

In general.

Fact that District of Columbia Administrative Procedure Act expressly imposes a statement of reasons requirement only in contested cases does not bar imposing a requirement of state reasons in other contexts; the act was meant only to prescribe minimum procedures. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1505(c), 1-1510. *Citizens Ass'n of Georgetown, Inc. v. Zoning Com. of District of Columbia*, 477 F.2d 402, 1973 U.S. App. LEXIS 11831 (C.A.D.C. 1973).

Question of whether Police and Firefighters Retirement and Relief Board could engage in adjudicative rule-making and adopt a claim-filing deadline, in proceeding on petition by daughter of retired police officer for a survivor's annuity due to low mental capacity, was for the Court of Appeals rather than the Board, in daughter's appeal of Board order denying her petition as untimely, as the resolution of the question turned on the applicability of the District of Columbia Administrative Procedure Act (DCAPA), task did not fall within the special expertise of the Board, and instead the task was one that the Court could address in the first instance. *Andrews v. D.C. Police & Fire-*

fighters Ret. & Relief Bd., 991 A.2d 763, 2010 D.C. App. LEXIS 135 (2010).

Under District of Columbia Administrative Procedure Act, in order that interested persons be afforded opportunity to be heard on proposed rule, general public must be advised of current status of proposed rule as it stands before rule maker and Congress intended notice of a proposed rule to inform public that rule maker would either wait 30 days before taking final action on pending proposal or was contemplating taking final action in less than 30 days. D.C. Code §§ 1-1502(6), 1-1505(a), 1-1506(c). *Junghans v. Department of Human Resources*, 289 A.2d 17, 1972 D.C. App. LEXIS 356 (1972).

Necessity for rulemaking proceedings.

There is no contradiction between agency's contention that its notice and comment were not required and its argument that notice and comment provisions were in fact satisfied, as an agency cannot be faulted for attempting to provide clarification of a preexisting regulation and does not waive its right to argue that regulation is an interpretive rule by considering and responding to the comments which it has received. *Chemical Waste Management, Inc. v. EPA*, 869 F.2d 1526, 1989 U.S. App. LEXIS 3052 (C.A.D.C. 1989).

Interpretive rules do not require notice and comment rulemaking so long as the interpretation is within the scope of the regulatory and statutory language. *Barrick Goldstrike Mines, Inc. v. Whitman*, 260 F.Supp.2d 28, 2003 U.S. Dist. LEXIS 13158 (2003).

The very purpose of rulemaking is for an agency to consider plausible options and only adopt a proposal after a comment period. *Wash. Gas Energy Servs. v. District of Columbia PSC*, 893 A.2d 981, 2006 D.C. App. LEXIS 94 (2006).

Since tariff involved only a repagination, use of letter of acceptance procedure for public utility tariff was all that was required. D.C. Code 1981, § 43-527. *Professional Answering Service, Inc. v. Chesapeake & Potomac Tel. Co.*, 565 A.2d 55, 1989 D.C. App. LEXIS 200 (1989).

District of Columbia did not engage in "rulemaking" within context of Administrative Procedure Act by withholding 10% of AFDC recipient's monthly grant to recoup prior overpayment, pursuant to federal regulation, and thus, uniformly applied 10% recoupment rate was effective without compliance with Act, where District failed to adopt lower rate, but merely acted pursuant to ceiling rate in federal regulation. D.C. Code 1981, §§ 1-1502(6), 7), 1-1506. *Boyd v. District of Columbia Dep't of Human Services*, 524 A.2d 744, 1987 D.C. App. LEXIS 335 (1987).

Implementation of mandatory federal directive that permits no choice other than to initiate administrative or judicial challenge, is not rule making under Administrative Procedure

Act in that decision to challenge is not "fundamental policy determination." D.C. Code 1981, §§ 1-1501 et seq., 1-1506, 1-1538; Social Security Act, § 1116, as amended, 42 U.S.C. § 1316. *Hamer v. Department of Human Services, etc.*, 492 A.2d 1253, 1985 D.C. App. LEXIS 382 (1985).

Interpretation or implementation by taxing authorities of words "full and true value" by changing debasement factor for taxation of single-family residences from 55 percent of estimated market value to 60 percent was, within meaning of District of Columbia Administrative Procedure Act, "rulemaking" such as to require publication of notice, despite contention that change was part of effort to equalize District of Columbia tax assessments as required by Constitution. D.C. Code §§ 1-1502(6, 7), 1-1507(c), 47-713. *District of Columbia v. Green*, 310 A.2d 848, 1973 D.C. App. LEXIS 370 (1973).

Commissioner's order directing the Department of Human Resources to set level of public assistance payments at 75% of public assistance standards, whether considered an implementing directive or prescribing policy, was a "rule" as defined by District of Columbia Administrative Procedure Act and since commissioner's order was never published in the District of Columbia register, it never became effective, and decision of Department of Human Resources to reduce petitioner's monthly public assistance payments could not stand because based on the invalid order. *Social Security Act*, §§ 1 et seq., 2, 401 et seq., 402, 402(a)(23), 1001 et seq., 1002, 1401 et seq., 1402 as amended 42 U.S.C. §§ 301 et seq., 302, 601 et seq., 602, 602(a)(23), 1201 et seq., 1202, 1351 et seq., 1352; D.C. Code §§ 1-1502(6), 1-1505(a), 1-1506(c), 1507. *Junghans v. Department of Human Resources*, 289 A.2d 17, 1972 D.C. App. LEXIS 356 (1972).

Notice of rulemaking.

To the extent that an agency's interpretation of a regulation is a nonobvious or unanticipated reading, it is deemed a legislative rule that can only be promulgated through notice-and-comment rulemaking. *Barrick Goldstrike Mines, Inc. v. Whitman*, 260 F.Supp.2d 28, 2003 U.S. Dist. LEXIS 13158 (2003).

Police and Firefighters Retirement and Relief Board could not, in proceeding on petition by daughter of retired police officer for a survivor's annuity due to low mental capacity, apply a claim-filing deadline to bar daughter's claim, as the Board would be imposing an additional eligibility requirement for receiving a survivor's annuity under Retirement and Disability Act, any such rule would not be an "interpretive rule," instead the rule would be a "legislative rule," and legislative rules were subject to the notice and comment provisions of District of Columbia Administrative Procedure Act

(DCAPA); in asserting the authority to impose the additional requirement, the Board was not purporting to interpret any word or phrase under the Act or the implementing regulations, but instead proposed to supplement the Act and regulations with a new substantive rule of general application. *Andrews v. D.C. Police & Firefighters Ret. & Relief Bd.*, 991 A.2d 763, 2010 D.C. App. LEXIS 135 (2010).

Electricity suppliers had standing to complain that public utilities and telecommunications services providers did not have notice of proposed rule on assessments to cover budgets of Public Service Commission (PSC) and Office of People's Counsel (OPC) and that rulemaking proceeding was invalid due to lack of notice to other affected parties; the lack of notice to others likely caused actual harm to suppliers. *Wash. Gas Energy Servs. v. District of Columbia PSC*, 893 A.2d 981, 2006 D.C. App. LEXIS 94 (2006).

Even if notice requirements of Administrative Procedure Act were applicable with regard to proposed revised minimum wage order of Minimum Wage and Industrial Safety Board, such requirements were met where notice of proposed order was published and such notice set forth time and place of public hearing, contained summary of major provisions of proposed order and stated that such order, recommendations of ad hoc committee, wage data, cost of living budgets and related materials would be available at hearing and prior thereto at office of Board. D.C. Code §§ 1-1501 et seq., 1-1509, 36-401 et seq., 36-407(a, c), 36-408(d). *Hotel Asso. of Washington v. District of Columbia Minimum Wage & Industrial Safety Board*, 318 A.2d 294, 1974 D.C. App. LEXIS 395 (1974).

Interested persons are not afforded an opportunity to comment on proposed rules within meaning of District of Columbia Administrative Procedure Act if general public does not know where or how to submit the comments. D.C. Code §§ 1-1502(6), 1-1505(a), 1-1506(c). *Junghans v. Department of Human Resources*, 289 A.2d 17, 1972 D.C. App. LEXIS 356 (1972).

Under District of Columbia Administrative Procedure Act, in order that interested persons be afforded opportunity to be heard on proposed rule, general public must be advised of current status of proposed rule as it stands before rule maker and Congress intended notice of a proposed rule to inform public that rule maker would either wait 30 days before taking final action on pending proposal or was contemplating taking final action in less than 30 days. D.C. Code §§ 1-1502(6), 1-1505(a), 1-1506(c). *Junghans v. Department of Human Resources*, 289 A.2d 17, 1972 D.C. App. LEXIS 356 (1972).

Publication of notice.

Where closing of medical clinic in District of Columbia was an implementation of policy, it

constituted a "rule" within the District of Columbia Administrative Procedure Act; thus, since the finalized decision to close clinic was made no later than four days after publication of proposed closing of clinic, instead of waiting 30 days from publication of notice before taking final action and there was no indication in the notice of intention to take action in less than 30 days, the closure violated the District of Columbia Code. D.C. Code §§ 1-1502(6), 1-1505(a), 1-1510. *Spivey v. Barry*, 501 F. Supp. 1093, 1980 U.S. Dist. LEXIS 16285 (1980), reversed by, remanded by 665 F.2d 1222, 214 U.S. App. D.C. 404, 1981 U.S. App. LEXIS 17915 (1981).

Statute on agency's publication of notice of intended action so as to afford interested persons opportunity to submit data and views requires (1) an opportunity for interested persons to participate through submission of written data, views, or arguments and (2), implicitly, agency's consideration of the data and views submitted. *Wash. Gas Energy Servs., Petitioner v. D.C. PSC*, 924 A.2d 296, 2007 D.C. App. LEXIS 236 (2007).

Public Service Commission's (PSC) formula for assessing electricity suppliers to cover budgets of PSC and Office of People's Counsel (OPC) was invalid without publication in District of Columbia Register; public utilities and telecommunications services providers were subject to and affected by the formula and lacked actual notice. *Wash. Gas Energy Servs. v. District of Columbia PSC*, 893 A.2d 981, 2006 D.C. App. LEXIS 94 (2006).

Where reference in notice of proposed rule to regulation of Department of Health, Education and Welfare without identifying where that regulation could be found and read and without explaining regulation's relevance to the District of Columbia's need for expediency did not constitute good cause found and published for action by a rule maker upon less than 30 days' notice. D.C. Code §§ 1-1502(6), 1-1505(a), 1-1506(c). *Junghans v. Department of Human Resources*, 289 A.2d 17, 1972 D.C. App. LEXIS 356 (1972).

Sufficiency of notice.

Claim of inmate and his wife that Department of Corrections' action in failing to comply with public notice and comment requirements of District of Columbia Administrative Procedures Act, as well as publication requirement of District of Columbia law, rendered visitation regulations invalid was more properly decided in the first instance by local courts of District of Columbia, rather than by federal district court. D.C. Code 1981, §§ 1-1501 et seq., 1-1538(b). *Robinson v. Palmer*, 841 F.2d 1151, 1988 U.S. App. LEXIS 3410 (C.A.D.C. 1988).

Classification of assets regulations promulgated by Federal Home Loan Bank Board did not so sharply deviate from notice of proposed

rulemaking as to deprive affected parties of notice and opportunity to respond, though financial association's net worth could be reduced under regulations, while no such possibility existed under scheme applicable to banks which was basis of proposed regulations; difference between final regulations and proposed scheme was in essence procedural, as substantive effect of high-risk loan would be same under either system, and Bank Board adequately explained logical reason for change. 5 U.S.C. § 553(b)(3), (c); *National Housing Act*, § 403(b), 12 U.S.C. § 1726(b). *Haralson v. Federal Home Loan Bank Bd.*, 655 F. Supp. 1561, 1987 U.S. Dist. LEXIS 13420 (1987), vacated by 678 F. Supp. 925, 1987 U.S. Dist. LEXIS 13008 (D.D.C. 1987).

Federal Home Loan Bank Board's notice of proposed rulemaking, concerning classification of certain commercial loans of institutions insured by Federal Savings and Loan Insurance Corporation and reevaluation of assets by examination staff, failed to give adequate notice of use of standards in Bank Board memorandum to judge appraisals of real estate which secured institution loans; provisions of memorandum, addressed to sufficiency and format of appraisal, were not addressed in notice, and mention of memorandum in several comments received did not establish adequacy of notice. 5 U.S.C. § 553(b)(3), (c); *National Housing Act*, § 403(b), 12 U.S.C. § 1726(b). *Haralson v. Federal Home Loan Bank Bd.*, 655 F. Supp. 1561, 1987 U.S. Dist. LEXIS 13420 (1987), vacated by 678 F. Supp. 925, 1987 U.S. Dist. LEXIS 13008 (D.D.C. 1987).

Public utilities and telecommunications services providers were subject to and affected by the formula used to assess electricity suppliers to cover budgets of Public Service Commission (PSC) and Office of People's Counsel (OPC), and, thus, suppliers' actual notice of proposed rule for assessment was insufficient under statute requiring agency to publish proposed rule in the District of Columbia Register unless all persons subject thereto were named and either personally served or otherwise had actual notice thereof; the scheme for reimbursing the PSC and OPC was a zero-sum game since every dollar collected from the members of one group would be a dollar that members of the other groups did not have to pay. *Wash. Gas Energy Servs. v. District of Columbia PSC*, 893 A.2d 981, 2006 D.C. App. LEXIS 94 (2006).

Regulations promulgated by the District of Columbia's Health Planning and Development Agency pursuant to the District of Columbia Certificate of Need Act [D.C. Code 1981, § 32-301 et seq.] were not invalid for Agency's failure to file a statement of basis and purposes considered in their formulation; absence of requirement of a statement of basis and purpose from District of Columbia Administrative Pro-

cedure Act [D.C. Code 1981, § 1-1506 et seq.] was reflective of a deliberate policy choice by Congress and City Council of the District of Columbia. *District of Columbia Hosp. Asso. v. Barry*, 498 A.2d 216, 1985 D.C. App. LEXIS 484 (1985).

Final action of an agency must be similar enough to original notice of proposed rulemaking so that all interested parties are assured opportunity to protect their interests by contributing to administrative process. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

Even if notice requirements of Administrative Procedure Act were applicable with regard to proposed revised minimum wage order of Minimum Wage and Industrial Safety Board, such requirements were met where notice of proposed order was published and such notice set forth time and place of public hearing, contained summary of major provisions of proposed order and stated that such order, recommendations of ad hoc committee, wage data, cost of living budgets and related materials would be available at hearing and prior thereto at office of Board. D.C. Code §§ 1-1501 et seq., 1-1509, 36-401 et seq., 36-407(a, c), 36-408(d). *Hotel Asso. of Washington v. District of Columbia Minimum Wage & Industrial Safety Board*, 318 A.2d 294, 1974 D.C. App. LEXIS 395 (1974).

Where notice of proposed rule as to public assistance payments did not state where and in what way, orally or in writing, interested persons were to submit their views and specified only that welfare payment proposal was being considered without indicating in any way that commissioner would take his final action on proposal in less than 30 days, the notice did not provide adequate information so as to afford interested persons opportunity to submit their views on proposal before it was adopted and did not meet statutory requirements of District of Columbia Administrative Procedure Act. Social Security Act, §§ 1 et seq., 2, 401 et seq., 402, 402(a)(23), 1001 et seq., 1002, 1401 et seq., 1402 as amended 42 U.S.C. §§ 301 et seq., 302, 601 et seq., 602, 602(a)(23), 1201 et seq., 1202, 1351 et seq., 1352; D.C. Code §§ 1-1502(6), 1-1505(a), 1-1506(c). *Junghans v. Department of Human Resources*, 289 A.2d 17, 1972 D.C. App. LEXIS 356 (1972).

Interested persons are not afforded an opportunity to comment on proposed rules within meaning of District of Columbia Administrative Procedure Act if general public does not know where or how to submit the comments. D.C. Code §§ 1-1502(6), 1-1505(a), 1-1506(c). *Junghans v. Department of Human Resources*, 289 A.2d 17, 1972 D.C. App. LEXIS 356 (1972).

Where reference in notice of proposed rule to regulation of Department of Health, Education

and Welfare without identifying where that regulation could be found and read and without explaining regulation's relevance to the District of Columbia's need for expediency did not constitute good cause found and published for action by a rule maker upon less than 30 days' notice. D.C. Code §§ 1-1502(6), 1-1505(a), 1-1506(c). *Junghans v. Department of Human Resources*, 289 A.2d 17, 1972 D.C. App. LEXIS 356 (1972).

Zoning.

Where Zoning Commission failed to meet its self-imposed 30-day deadline for prehearing publication of a proposed regulation in the District of Columbia Register, but timely notice to public had been placed in two newspapers more than 30 days in advance, interested parties had actual notice one week prior to hearing, hearing transcript revealed their vigorous participation in opposition to the regulation, and two extra weeks were allowed for filing of additional written comments, there was no substantial prejudice which could require repeal of the regulation. D.C. Code 1981, §§ 1-1506(a), 5-415. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 461 A.2d 1049, 1983 D.C. App. LEXIS 396 (1983).

By interpreting phrase "similar professional person" as used in zoning regulation, limiting use in district to certain named occupations or similar professional person, District of Columbia Board of Zoning Adjustment was not "rulemaking" without complying with procedural formalities required by statute but, rather, was interpreting phrase within its statutory authority, and thus substantial deference had to be accorded its interpretation. D.C. Code § 1-1502(6, 7). *Keefe Co. v. District of Columbia Board of Zoning Adjustment*, 409 A.2d 624, 1979 D.C. App. LEXIS 521 (1979).

Restraints of District of Columbia Administrative Procedure Act and full range of due process protections necessary to an adversary adjudication were not applicable to rulemaking proceedings before the Zoning Commission. D.C. Code §§ 1-1501 et seq., 5-413 et seq. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

Ex parte communications between Zoning Commission staff and various developers during rule-making proceeding relating to Georgetown waterfront did not violate requirements of District of Columbia Administrative Procedure Act or due process, and did not deny a fair hearing. D.C. Code §§ 1-1501 et seq., 5-413 et seq. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

Zoning Commission must determine in advance of hearing whether it is going to conduct an "adjudicative" or "rulemaking" type hearing.

Schneider v. District of Columbia Zoning Com.,
383 A.2d 324, 1978 D.C. App. LEXIS 424
(1978).

§ 2-506. Filing and publishing of rules [Repealed].

Repealed.

(Oct. 21, 1968, 82 Stat. 1207, Pub. L. 90-614, § 7; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(g), 22 DCR 2048; Mar. 29, 1977, D.C. Law 1-96; § 3(a), (c); Mar. 6, 1979, D.C. Law 2-153, § 6(b), 25 DCR 6960.)

Prior Codifications. — 1981 Ed., Omitted. 1973 Ed., § 1-1506.

§ 2-507. Compilation of rules and regulations.

(a) As soon as practicable after the effective date of this subchapter, the Mayor shall have compiled, indexed, and published in the District of Columbia Register all regulations adopted by the District of Columbia Council and rules adopted by the Mayor and District of Columbia Council and each agency and in effect at the time of such compilation. Such compilations shall be promptly supplemented or revised as may be necessary to reflect new regulations and rules and changes in regulations and rules.

(b) Compilations shall be made available to the public at a price fixed by the Mayor.

(c) The Mayor must publish the 1st compilation required by subsection (a) of this section within 1 year after the effective date of this subchapter and no regulations adopted by the District of Columbia Council nor rule adopted by the Mayor or by an agency before the date of such 1st publication which has not been filed and published in accordance with this subchapter and which is not set forth in such compilation shall be in effect after 1 year after the effective date of this subchapter.

(Oct. 21, 1968, 82 Stat. 1207, Pub. L. 90-614, § 7; 1973 Ed., § 1-1506; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(g), 22 DCR 2048; Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c); Mar. 6, 1979, D.C. Law 2-153, § 6(b), 25 DCR 6960.)

Section references. — This section is referred to in §§ 11-722, and 11-1525.

Prior Codifications. — 1981 Ed., § 1-1507.
1973 Ed., § 1-1507.

Legislative history of Law 1-19. — For legislative history of D.C. Law 1-19, see Historical and Statutory Notes following § 2-501.

Legislative history of Law 1-96. — For legislative history of D.C. Law 1-96, see Historical and Statutory Notes following § 2-531.

Editor's notes. — "District of Columbia Council", appearing twice in (a) and once in (c), should probably be "Council of the District of Columbia" or "Council", in view of § 1-1502(1)(B) and the fact that this section refers to current and ongoing Council activity.

Uniform Law: This section is based upon § 5 of the Uniform Law Commissioners' Model State Administrative Procedure Act (1961 Act).

CASE NOTES

ANALYSIS

Access and dissemination.
Necessity for publication.

Special publications.

Access and dissemination.
District of Columbia's "Duncan Ordinance"

prohibited practice of metropolitan police department of routinely disseminating to Federal Bureau of Investigation, whether before conviction or after exoneration or both, arrest records which included not only arrestees' fingerprints but also data identifying persons arrested and information concerning details and surrounding circumstances of arrests, at least as long as FBI continued to redisseminate that data for other than law enforcement purposes and particularly for purposes of employment and licensing. District of Columbia Self-Government and Governmental Reorganization Act, §§ 101 et seq., 714(a), 87 Stat. 774; Reorganization Plan No. 3 of 1967, D.C. Code, Tit. 1, Appendix I; D.C. Code §§ 1-1501 et seq., 1-1507(a, c), 4-119, 4-134a, 4-135, 16-2333(a). *Utz v. Cullinane*, 520 F.2d 467, 1975 U.S. App. LEXIS 12491 (C.A.D.C. 1975).

Necessity for publication.

District of Columbia police regulation prohibiting gambling on vacant or unoccupied property where conduct can be seen or heard from public highway is not invalid on basis that it was not published within one year after effective date of the Administrative Procedure Act as required by the Act where effective date of the Act was October 21, 1969 and regulation was incorporated by reference to special edition of the District of Columbia Register on July 27, 1970. U.S. Const. Amends. 4-6; D.C. Code 1981, §§ 1-1501 et seq., 1-1507. *Green v. District of Columbia*, 710 F.2d 876, 1983 U.S. App. LEXIS 26335 (C.A.D.C. 1983).

Whatever rule is used in District of Columbia to determine eligibility for a license to carry a handgun, it must be adopted, published, and applied according to law, and remain consistent with congressional policy. D.C. Code §§ 1-227, 1-1502, 1-1505 to 1-1507, 22-3206. *Jordan v. District of Columbia Board of Appeals & Re-*

view, 315 A.2d 153, 1974 D.C. App. LEXIS 365 (1974).

Fact that certain of the police regulations governing applications for license to carry concealed weapon in District of Columbia had not been compiled and published as required by statute, did not require blind issuance of such a license to petitioner, who failed to satisfy such regulations. D.C. Code §§ 1-1502, 1-1505 to 1-1507, 22-3206. *Jordan v. District of Columbia Board of Appeals & Review*, 315 A.2d 153, 1974 D.C. App. LEXIS 365 (1974).

Special publications.

A police regulation of the District of Columbia pertaining to equal employment opportunities even if not published in a compilation was properly published where a special edition of the District of Columbia register incorporated District of Columbia police regulations and such regulations were available for purchase at District of Columbia publications office. D.C. Code §§ 1-1504(a), 1-1507. *D. C. Human Relations Com. v. National Geographic Soc.*, 475 F.2d 366, 1973 U.S. App. LEXIS 11668 (C.A.D.C. 1973).

Department of Human Resources Social Services Administration's Food Stamp Operating Manual, consisting of a reprint of the "Plan of Operation," the schedules prepared by the Food and Nutrition Service, statutory references, guidelines and interoffice procedures, forms and reports, and what is identified in a manual as "Operating Data and Standards" is neither a regulation nor a "rule" within the purview of the District of Columbia Administrative Procedure Act. D.C. Code §§ 1-1502(6), 1-1507; The Food Stamp Act of 1964, § 2 et seq., 7 U.S.C. § 2011 et seq. *Wolston v. District of Columbia Dep't of Human Resources Social Services Administration*, 291 A.2d 85, 1972 D.C. App. LEXIS 391 (1972).

§ 2-508. Declaratory orders.

On petition of any interested person, the Mayor or an agency, within their discretion, may issue a declaratory order with respect to the applicability of any rule, regulation, Council act or resolution, or statute enforceable by them or by it, to terminate a controversy (other than a contested case) or to remove uncertainty. A declaratory order, as provided in this section, shall be binding between the Mayor or the agency, as the case may be, and the petitioner on the state of facts alleged and established, unless such order is altered or set aside by a court. A declaratory order is subject to review in the manner provided in this subchapter for the review of orders and decisions in contested cases, except that the refusal of the Mayor or of an agency to issue a declaratory order shall not be subject to review. The Mayor and each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition.

(Oct. 21, 1968, 82 Stat. 1207, Pub. L. 90-614, § 9; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(ff), 22 DCR 2054; Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), 23 DCR 9532b.)

Section references. — This section is referred to in § 11-722.

Prior Codifications. — 1981 Ed., § 1-1508. 1973 Ed., § 1-1508.

Legislative history of Law 1-19. — For legislative history of D.C. Law 1-19, see Historical and Statutory Notes following § 2-501.

Legislative history of Law 1-96. — For legislative history of D.C. Law 1-96, see Historical and Statutory Notes following § 2-531.

Editor's notes. — Uniform Law: This section is based upon § 8 of the Uniform Law Commissioners' Model State Administrative Procedure Act (1961 Act).

CASE NOTES

ANALYSIS

In general.

Judicial review.

Other remedies.

In general.

It is within sound discretion of Public Utilities Commission to issue declaratory order on applicant's proposal, and Commission is not required to make one. D.C. Code 1981, § 1-1508; 5 U.S.C. § 554(e). *People's Counsel of District of Columbia v. Public Service Com.*, 474 A.2d 1274, 1984 D.C. App. LEXIS 366 (1984).

Judicial review.

Claims by owner of apartment building in petition that it filed with the Water and Sewer Authority (WASA), that it was not liable for tenants' unpaid water bills and that WASA could not file liens on the building for such bills, did not arise from a "contested case," and thus owner was not required by the Administrative Procedure Act (APA) to appeal adverse decision by WASA's hearing officer directly to the Court of Appeals, where owner was not challenging the particulars of water bills, and owner's petition before the WASA focused on questions of law and policy rather than adjudicative facts. *Euclid St., LLC v. D.C. Water & Sewer Auth.*, 41 A.3d 453, 2012 D.C. App. LEXIS 142 (2012).

Refusal of Public Utilities Commission to issue declaratory order was not reviewable by Court of Appeals, despite fact that Commission provided detailed explanation for its ruling and despite statute which grants jurisdiction to Court of Appeals to hear and determine any appeal from or decision of Commission. D.C. Code 1981, §§ 1-1508, 43-905(a). *People's Counsel of District of Columbia v. Public Ser-*

vice Com., 474 A.2d 1274, 1984 D.C. App. LEXIS 366 (1984).

Reviewability of Public Utilities Commission's refusal to issue declaratory order concerns availability of review and not its scope or procedure by which it is secured; thus, statute which grants Court of Appeals jurisdiction to hear and determine any appeal from order or decision of Commission did not permit review of Commission's refusal to issue declaratory order. D.C. Code 1981, §§ 1-1508, 43-905(a). *People's Counsel of District of Columbia v. Public Service Com.*, 474 A.2d 1274, 1984 D.C. App. LEXIS 366 (1984).

Refusal of Minimum Wage and Industrial Safety Board to issue declaratory order requested by employer was not subject to review. D.C. Code § 1-1508. *Sonderling Broadcasting Corp. v. District of Columbia Minimum Wage & Industrial Safety Board*, 315 A.2d 828, 1974 D.C. App. LEXIS 378 (1974).

Other remedies.

Exclusive remedy of petitioner, which was denied exemption as an institution and assessed taxes due by the District of Columbia Department of Finance and Revenue, Property Assessment Division and which then sought review in the District of Columbia Court of Appeals under the District of Columbia Administrative Procedure Act, lay in the tax division of the superior court. D.C. Code §§ 1-1508, 11-1201, 11-1202. *Washington Theater Club, Inc. v. District of Columbia Dept of Finance & Revenue, Property Assessment Div.*, 302 A.2d 231, 1973 D.C. App. LEXIS 250 (1973), US Supreme Court certiorari denied by 414 U.S. 831, 94 S. Ct. 63, 38 L. Ed. 2d 66, 1973 U.S. LEXIS 406 (1973).

§ 2-509. Contested cases.

(a) In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be. The notice shall state the time, place, and issues involved, but if, by reason of the

nature of the proceeding, the Mayor or the agency determines that the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. The notice shall also state that if a party or witness is deaf, or because of a hearing impediment cannot readily understand or communicate the spoken English language, the party or witness may apply to the agency for the appointment of a qualified interpreter. Unless otherwise required by law, other than this subchapter, any contested case may be disposed of by stipulation, agreed settlement, consent order, or default.

(b) In contested cases, except as may otherwise be provided by law, other than this subchapter, the proponent of a rule or order shall have the burden of proof. Any oral and any documentary evidence may be received, but the Mayor and every agency shall exclude irrelevant, immaterial, and unduly repetitious evidence. Every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Where any decision of the Mayor or any agency in a contested case rests on official notice of a material fact not appearing in the evidence in the record, any party to such case shall on timely request be afforded an opportunity to show the contrary.

(c) The Mayor or the agency shall maintain an official record in each contested case, to include testimony and exhibits, but it shall not be necessary to make any transcription unless a copy of such record is timely requested by any party to such case, or transcription is required by law, other than this subchapter. The testimony and exhibits, together with all papers and requests filed in the proceeding, and all material facts not appearing in the evidence but with respect to which official notice is taken, shall constitute the exclusive record for order or decision. No sanction shall be imposed or rule or order or decision be issued except upon consideration of such exclusive record, or such lesser portions thereof as may be agreed upon by all the parties to such case. The cost incidental to the preparation of a copy or copies of a record or portion thereof shall be borne equally by all parties requesting the copy or copies.

(d) Whenever in a contested case a majority of those who are to render the final order or decision did not personally hear the evidence, no order or decision adverse to a party to the case (other than the Mayor or an agency) shall be made until a proposed order or decision, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of those who are to render the order or decision, who, in such case, shall personally consider such portions of the exclusive record, as provided in subsection (c) of this section, as may be designated by any party.

(e) Every decision and order adverse to a party to the case, rendered by the Mayor or an agency in a contested case, shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and

in accordance with the reliable, probative, and substantial evidence. A copy of the decision and order and accompanying findings and conclusions shall be given by the Mayor or the agency, as the case may be, to each party or to his attorney of record.

(Oct. 21, 1968, 82 Stat. 1208, Pub. L. 90-614, § 10; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(gg)-(kk), 22 DCR 2054; Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), 23 DCR 9532b; Feb. 11, 1982, D.C. Law 4-67, § 2(a), 28 DCR 5043; Jan. 28, 1988, D.C. Law 7-62, § 14(a), 34 DCR 7426.)

Cross references. — Abandoned or unclaimed property, submission of claim for property, hearing following denial or failure to act on claim, see § 41-125.

Asbestos workers or businesses, reprimands and suspension or revocation of license or permit, grounds and procedure, see § 8-111.06.

Banks and banking, regional interstate banking, nonregional bank holding companies, hearing to determine compliance with orders as to commitments, see § 26-706.01.

Banks and banking, savings and loan acquisitions, hearing to determine compliance with orders as to commitments, see §§ 26-1204 and 26-1205.

Boxing and wrestling commission, permits and licenses, revocation and suspension, contested case provisions applicable to revocation and suspension proceedings, see § 3-606.

Child development facilities regulation, duty of mayor to develop administrative procedures for hearings, contested hearing procedure, see § 7-2036.

Compulsory/no-fault motor vehicle insurance, taxicab waiver, hearings to determine minimum liability insurance requirements during waiver period, see § 31-2411.

Consumer protection procedures, complaint procedure, application of Administrative Procedure Act, § 28-3905.

District of Columbia Court of Appeals, jurisdiction, administrative orders and decisions, see § 11-722.

Emergency executive orders, applicability of contested cases provision, see § 7-2308.

Employment services licensing and regulation, application for license, right to hearing when application rejected, see § 32-402.

Employment services, violations, cease and desist orders, hearing procedure, see § 32-412.

Environmental controls, underground storage tank management, proposed orders, finality of orders, requests for hearing, contested hearing procedure, see § 8-113.09.

Funeral directors, violations, contested hearing procedures applicable to hearing on written complaint, see § 3-409.

General license law, grounds for suspension or revocation of licenses, hearing procedure, see § 47-2844.

Hazardous waste management, hearing following adverse action, contested case procedure to apply, see § 8-1308.

Health services planning, administrative appeal, contested cases to be heard by Board of appeals and review, see § 44-413.

Insurance, insurance companies deemed to be in hazardous financial condition, corrective action, requests for hearing, hearing procedure, see § 31-2102.

Money lenders, complaints, investigations, right to contested hearing prior to suspension, revocation or denial of license, see § 26-906.

Motor vehicles and traffic, motor vehicle safety responsibility, hearing procedure applicable to administrative actions see § 50-1301.04.

Motor vehicles and traffic, operators' permits, application of Administrative Procedure Act to administrative actions affecting permits, see § 50-1403.01.

Public utilities, water and sewer services, right to contest water or sewer bill, hearing procedure, see § 34-2305.

Regional interstate banking, bank holding company, failure to fulfill express written commitments, compliance order, hearing to determine compliance, see § 26-704.

Rental housing conversion and sale, implementation and enforcement, administrative proceedings, hearing procedure, see § 42-3405.08.

Solid waste management, solid waste facility permits, hearing after adverse action, contested case procedures to apply, see § 8-1059.

Substance abuse and mental illness insurance coverage, rates and rating plans, adjustment of rates following contested hearing, see § 31-3109.

Substance abuse treatment and prevention, certification of treatment facilities, notice and hearing before suspension or revocation of license, see § 44-1204.

Veterinarians, contested case provisions applicable to hearings on written complaints, see § 3-510.

Prior Codifications. — 1981 Ed., § 1-1509. 1973 Ed., § 1-1509.

Legislative history of Law 1-19. — For legislative history of D.C. Law 1-19, see Historical and Statutory Notes following § 2-501.

Legislative history of Law 1-96. — For legislative history of D.C. Law 1-96, see Historical and Statutory Notes following § 2-531.

Legislative history of Law 4-67. — Law 4-67 was introduced in Council and assigned Bill No. 4-55, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 13, 1981 and October 27, 1981, respectively. Signed by the Mayor on November 9, 1981, it was assigned Act No. 4-113 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-62. — Law

7-62 was introduced in Council and assigned Bill No. 7-108, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 13, 1987 and October 27, 1987, respectively. Signed by the Mayor on November 5, 1987, it was assigned Act No. 7-95 and transmitted to both Houses of Congress for its review.

Editor's notes. — Uniform Law: This section is based upon §§ 9 and 10 of the Uniform Law Commissioners' Model State Administrative Procedure Act (1961 Act).

CASE NOTES

ANALYSIS

Civil rights.
 Concealed weapon permits.
 Construction with other statutes.
 Contested cases.
 —Adjudicatory proceeding, contested cases.
 —In general.
 —Quasi-legislative or quasi-judicial proceedings, contested cases.
 —Selection and tenure of public officers and employees, contested cases.
 Continuance.
 Crime victims board proceedings.
 Discretion of agency.
 Election contests.
 Ex parte communications.
 Failure to provide hearing.
 Findings of fact and conclusions of law—In general.
 —Collateral or immaterial issues, findings of fact and conclusions of law.
 —Necessity, findings of fact and conclusions of law.
 —Sufficiency of evidence to support findings of fact and conclusions of law.
 —Sufficiency, findings of fact and conclusions of law.
 Historic preservation.
 Judicial notice.
 Judicial review.
 —Disposition of appeal, judicial review.
 —Findings of fact and conclusions of law, judicial review.
 —In general.
 —Presumptions and burden of proof, judicial review.
 —Record, judicial review.
 —Standard of review.
 Labor and employment.
 —In general.
 —Wage and hours, labor and employment.
 Landlord and tenant.
 —In General.
 —Rent control, landlord and tenant.
 Liquors licenses and taxes.

Motor vehicle operation and driver license revocation.
 Police and firefighters retirement board.
 Preservation of issues.
 Presumptions and burden of proof, generally.
 Prisons and prisoners.
 Professional and occupational regulation and licensing.
 Proposed order requirement.
 Public service vehicles and taxicabs.
 Public utilities.
 —Electricity utilities, public utilities.
 —Evidence, generally, public utilities.
 —Gas utilities, public utilities.
 —Hearings, public utilities.
 —In general.
 —Judicial review, generally, public utilities.
 —Telecommunications, public utilities.
 Record, generally.
 Regulated industries.
 Representation by counsel.
 Res judicata and collateral estoppel.
 Right to notice and opportunity to be heard.
 Rules and regulations.
 Rules of practice and procedure.
 Schools.
 Settlement and consent agreements.
 Social services and public welfare.
 Sufficiency of notice.
 Telephonic hearings.
 Unemployment compensation.
 —Administrative review, unemployment compensation.
 —Admissibility of evidence, unemployment compensation.
 —In general.
 —Judicial review, unemployment compensation.
 —Notice and hearing, unemployment compensation.
 —Presumptions and burden of proof, unemployment compensation.
 —Weight and sufficiency of evidence, unemployment compensation.
 Witness testimony.
 —Cross examination and impeachment, witness testimony.

- Examination, witness testimony.
- Expert witnesses, witness testimony.
- In General.
- Workers compensation proceedings.
- Zoning and planning.
- Contested cases, generally, zoning and planning.
- Due process of law, zoning and planning.
- Findings of fact and conclusions of law, zoning and planning.
- In general.
- Judicial review, zoning and planning.
- Modification or amendment of regulations, zoning and planning.
- Nonconforming uses, zoning and planning.
- Permits, certificates and approvals, zoning and planning.
- Street closings, zoning and planning.
- Variances or exceptions, zoning and planning.

Civil rights.

Conclusion by District of Columbia Office of Human Rights as investigative body that there was no probable cause of discharge in retaliation for rights protected by Human Rights Act did not collaterally estop discharged employee from challenging discharge in § 1981 and civil rights conspiracy claims; proceedings before Office gave inadequate opportunity to litigate factual issues; and Office's finding of no jurisdiction threw status of earlier action into uncertain light. 42 U.S.C. §§ 1981, 1985(3); D.C. Code 1981, §§ 1-1501 to 1-1510, 1-2501 et seq., 1-2525, 1-2544, 1-2545, 1-2550 to 1-2553; § 1-1511 (repealed). *Alder v. Columbia Historical Soc.*, 690 F. Supp. 9, 1988 U.S. Dist. LEXIS 9252 (1988).

District of Columbia Housing Authority (DCHA) waived on appeal its argument that the Director of the Department of Human Rights (DHR) should not have decided employee's discrimination complaint without a full evidentiary hearing, where the DCHA did not request a hearing or object to the Director's decision to render a summary determination. *D.C. Hous. Auth. v. D.C. Office of Human Rights*, 881 A.2d 600, 2005 D.C. App. LEXIS 459 (2005).

Even though neither employee nor employer moved for hearing on issue of whether enforceable settlement agreement existed in sex discrimination claim before Commission on Human Rights, where resolution of factual discrepancies inherent in settlement documents and other evidence turned on determination of each party's credibility, hearing was necessary so that sworn testimony, cross-examination, and demeanor evidence could provide sufficient basis for determining whether enforceable settlement agreement existed. D.C. Code 1981, §§ 1-1509(b), 1-1510(a)(3)(A). *Garzon v. District of Columbia Comm'n Human*

Rights, 578 A.2d 1134, 1990 D.C. App. LEXIS 175 (1990).

Conclusion of District of Columbia Commission on Human Rights that employee was discriminated against on basis of sex when promotion offered to her was withdrawn because she would be absent from work due to pregnancy was not supported by and in accordance with reliable, probative and substantial evidence. D.C. Code § 1-1509(e); Civil Rights Act of 1964, § 703, 42 U.S.C. § 2000e-2. *Group Hospitalization, Inc. v. District of Columbia Com. on Human Rights*, 380 A.2d 170, 1977 D.C. App. LEXIS 270 (1977).

Findings of facts of Commission on Human Rights in employment discrimination case were incomplete and were not supported by substantial evidence; thus Commission's ruling that employer had been guilty of racial discrimination in termination of complainant's employment was arbitrary and capricious, an abuse of discretion and not in accordance with law. D.C. Code §§ 1-226, 1-1509(e). *Newsweek Magazine v. District of Columbia Com. on Human Rights*, 376 A.2d 777, 1977 D.C. App. LEXIS 444 (1977).

"Findings" in which the Commission on Human Rights merely set forth what complainant's testimony was or what other witnesses said, without stating it found statements to be factual or testimony credible, did not constitute findings of fact by Commission and could not be treated as such by appellate court. D.C. Code § 1-1509(e). *Newsweek Magazine v. District of Columbia Com. on Human Rights*, 376 A.2d 777, 1977 D.C. App. LEXIS 444 (1977).

Commission of Human Rights' findings as to sex discrimination complaint were inadequate for meaningful review by the Court of Appeals because they did not, as they should have, resolve basic issues of fact raised by evidence adduced at hearing and, accordingly, case would be remanded for further findings and conclusions. D.C. Code § 1-1509(e). *Communications Workers of America v. District of Columbia Com. on Human Rights*, 367 A.2d 149, 1976 D.C. App. LEXIS 445 (1976).

Evidence in proceeding by tenant in which he charged retaliatory and racially prejudiced eviction sustained finding that tenant made threats of violence to resident manager and his wife and sustained determination in favor of landlord. D.C. Code § 1-1509(e). *Miller v. District of Columbia Com. on Human Rights*, 352 A.2d 387, 1976 D.C. App. LEXIS 474 (1976).

Concealed weapon permits.

Where application for license to carry concealed pistol made no allegations of threats to applicant's person or property and he had not made any timely reports of any alleged threats and where the pistol, for which a license was applied, was an automatic pistol, application

was fatally defective under regulations in effect; applicant, who was given opportunity to correct such infirmities in his application but did not do so, was not entitled to relief from denial of application on theory that he need only allege suitability and that police then had burden of going forward to disprove applicant's claims. D.C. Code §§ 1-1509(b), 22-3206. *Jordan v. District of Columbia*, 362 A.2d 114, 1976 D.C. App. LEXIS 344 (1976).

Deliberative process incident to board of appeals and review's final orders in regard to application for license to carry concealed pistol was not covered by "Sunshine Act"; thus, board's orders, which affirmed metropolitan police department's denial of application, were not defective either because board members arrived at their decision at nonpublic conference after public hearing in which applicant and others testified or because no transcript of such conference was made. D.C. Code §§ 1-1503a, 1-1503a(b), 1-1509(b), 22-3206. *Jordan v. District of Columbia*, 362 A.2d 114, 1976 D.C. App. LEXIS 344 (1976).

Construction with other statutes.

District of Columbia Council has authority to, and intended to create an exception to contested case review by the Court of Appeals under the District of Columbia Administrative Procedure Act for certain cases adjudicated under the Traffic Adjudication Act; therefore, even though the adjudicative nature of such proceedings was functionally consistent with the general definition of a contested case, there was no conflict between the Traffic Adjudication Act and the District of Columbia Administrative Procedure Act. D.C. Code 1973, § 40-603(i); D.C. Code 1978 Supp. §§ 1-121 et seq., 1-147(a)(1), 1-1501 et seq.; D.C. Code 1980 Supp. § 4-1101 et seq. *District of Columbia v. Sullivan*, 436 A.2d 364, 1981 D.C. App. LEXIS 377 (1981).

Firearms Control Regulations Act of 1975 is not antithetical to Administrative Procedure Act. D.C. Code §§ 1-1509, 6-1801 et seq., 6-1820(b), 6-1846(b), 6-1879. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Contested cases.

— Adjudicatory proceeding, contested cases.

A "contested case" is a controversy involving a trial-type hearing that is required either by statute or by constitutional right, and which is an adjudicative, as opposed to a legislative, determination. *Powell v. D.C. Hous. Auth.*, 818 A.2d 188, 2003 D.C. App. LEXIS 132 (2003).

Contractor's appeal of decision of Department of Administrative Services to Contract Appeals Board may present contested case involving trial-type hearing, although contrac-

tor's protest will not result in contested case permitting review by Court of Appeals. D.C. Code 1981, §§ 1-1189.4, 1-1189.6, 1-1189.8. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 1988 D.C. App. LEXIS 208 (1988).

Under the District of Columbia Administrative Procedure Act, "contested case" status generally depends on whether agency proceeding is adjudicatory in nature. D.C. Code §§ 1-1501 et seq., 1-1502(8), (8)(B), 1-1509, 1-1509(a, c, e), 1-1510. *Wells v. District of Columbia Board of Education*, 386 A.2d 703, 1978 D.C. App. LEXIS 380 (1978).

Hearings that are not adjudicatory in nature, but which are equivalent to rulemakings, where the administrative body is acting in a legislative capacity, making policy decisions directed toward the general public, are not subject to the substantial evidence rule, but need only be justified by some "rational basis" that may be found in the administrative record. *Dwyer v. District of Columbia*, 120 WLR 2609 (Super. Ct. 1992).

— In general.

Award of contract for an on-line lottery system was not a "contested case" under District of Columbia code provision, and direct appeal from decision of the Lottery and Charitable Control Board awarding the contract would not lie in the Court of Appeals; hence, the superior court properly determined that it had jurisdiction to review the Board's decision. D.C. Code 1981, §§ 1-1502(8), 1-1509, 1-1510, 2-2536. *Network Technical Services, Inc. v. D.C. Data Co.*, 464 A.2d 133, 1983 D.C. App. LEXIS 440 (1983).

Public hearing preliminary to revision of Minimum Wage and Industrial Safety Board's order with regard to persons employed in hotel, restaurant and allied occupations was not a "contested case" within purview of notice provisions of Administrative Procedure Act. D.C. Code §§ 1-1502(8), 1-1505(a), 1-1509, 1-1510, 36-401 et seq., 36-401(a, b), 36-407, 36-407(a), 36-409(a). *Hotel Asso. of Washington v. District of Columbia Minimum Wage & Industrial Safety Board*, 318 A.2d 294, 1974 D.C. App. LEXIS 395 (1974).

— Quasi-legislative or quasi-judicial proceedings, contested cases.

The principal manifestation of a "contested case," within meaning of review provisions of Administrative Procedure Act of District of Columbia, is its character as a quasi-judicial process based on particular facts and information, and immediately affecting the interests of specific parties in the proceeding. D.C. Code §§ 1-1501 to 1-1510. *Citizens Asso. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

When a proceeding before an agency assumes primarily a quasi-judicial nature, the proceeding constitutes a contested case within meaning of review provisions of the District of Columbia Administrative Procedure Act. D.C. Code §§ 1-1501 to 1-1510. *Citizens Assn. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

— Selection and tenure of public officers and employees, contested cases.

There was no basis to conclude that because tenure of former dean of college at public university, who was faculty member, had different origin from tenure granted under general faculty tenure regulations, that it was of different species so as to render collective bargaining agreement (CBA), and reduction in force (RIF) under CBA, inapplicable to former dean, where university regulations did not distinguish between grants of tenure for deans and grants of tenure under traditional faculty review process, and in fact, regulation that set forth rights, privileges, and responsibilities of tenured professors only generally referred to tenured faculty, which suggested that two different types of tenure were identical in all but origin. *Hahn v. Univ. of the Dist. of Columbia*, 789 A.2d 1252, 2002 D.C. App. LEXIS 7 (2002).

Any matter involving selection or tenure of officer or employee of the District of Columbia is specifically excluded from definition of the term “contested case” for purposes of statute providing that, in contested cases, every party has right to present in person or by counsel his case or defense by oral and documentary evidence. D.C. Code 1981, § 1-1509(b). *Hoage v. Board of Trustees of the Univ. of the District of Columbia*, 714 A.2d 776, 1998 D.C. App. LEXIS 120 (1998).

Under provisions of District of Columbia Administrative Procedure Act giving District of Columbia Court of Appeals jurisdiction to review police department’s decision in a “contested case,” which did not include the “selection or tenure of an officer or employee of the District,” police department’s determination that police officers were not entitled to administrative leave was a decision of day-to-day government personnel management encompassed within statutory term “selection or tenure,” and thus decision was not a “contested case” subject to review by District of Columbia Court of Appeals. D.C. Code §§ 1-1501 et seq. 1-1502(8). *Money v. Cullinane*, 392 A.2d 998, 1978 D.C. App. LEXIS 324 (1978).

Continuance.

A request for a continuance is addressed to the sound discretion of an agency and will be set aside only for an abuse of discretion. *King v. D.C. Water & Sewer Auth.*, 803 A.2d 966, 2002 D.C. App. LEXIS 382 (2002).

Factors relevant to determining whether a trial court or agency abused its discretion in denying a request for a continuance include the reasons for the request, the prejudice that would result from its denial, the parties’ diligence in seeking relief, any lack of good faith, and any prejudice to the opposing party. *King v. D.C. Water & Sewer Auth.*, 803 A.2d 966, 2002 D.C. App. LEXIS 382 (2002).

Inclement weather combined with fragile health entitled petitioner to continuance of administrative hearing at which she failed to appear, even though a weather advisory had been issued the day before the hearing and the petitioner notified the officer after the time for the hearing to begin; the petitioner walked with a cane and was afraid of falling on ice, the denial of the continuance deprived the petitioner of the opportunity to contest her water bills, and requiring the petitioner to request a continuance the day before the hearing would put excessive weight on both knowledge of and the accuracy of overnight weather predictions. *King v. D.C. Water & Sewer Auth.*, 803 A.2d 966, 2002 D.C. App. LEXIS 382 (2002).

A request for a continuance when attendance at an administrative or court hearing would involve a serious risk to health should not be denied. *King v. D.C. Water & Sewer Auth.*, 803 A.2d 966, 2002 D.C. App. LEXIS 382 (2002).

Crime victims board proceedings.

Copy of complaint that elaborated upon victim’s conduct during incident that led to his beating could not serve as basis for affirming agency’s denial of benefits under District of Columbia Victims of Violent Crime Compensation Act absent any indication that complaint was part of evidence presented at administrative hearing. D.C. Code 1981, §§ 1-1509(c), 3-401 et seq. *Cooper v. District of Columbia Dep’t of Employment Services*, 588 A.2d 1172, 1991 D.C. App. LEXIS 75 (1991).

Discretion of agency.

No abuse of discretion occurred, and District of Columbia Administrative Procedure Act (APA) was not violated, when chairperson of District of Columbia Zoning Commission precluded opponents of application to modify planned unit development (PUD) to allow hotel to be converted to a cooperative apartment building from cross-examining applicant’s witnesses about the funding of related litigation and about how proposed changes to a health club would affect elderly persons with disabilities; neither subject had been broached on direct examination, and the chair reminded opponents’ attorney that he would be allowed to raise these topics during his own case. *Watergate E. Comm. Against Hotel Conversion to Co-Op Apts. v. D.C. Zoning Comm’n*, 953 A.2d 1036, 2008 D.C. App. LEXIS 333 (2008).

Election contests.

Proceeding wherein Board of Elections cred-

ited write-in ballot marked "Mr. Long" to inter-venor "De Long Harris, Jr." did not fall within the "elections" exception to the District of Columbia Administrative Procedure Act definition of contested cases and, thus, procedural requirements applicable to contested cases applied to proceeding and the Board was required to base its decision on substantial evidence of record. D.C. Code 1978 Supp., §§ 1-1501 et seq., 1-1502(8)(C), 1-1509(e). *Pendleton v. District of Columbia Bd. of Elections & Ethics*, 449 A.2d 301, 1982 D.C. App. LEXIS 405 (1982).

Ex parte communications.

Department of Employment Services violated Administrative Procedure Act by considering as evidence four letters and attachments submitted by employee after agency hearing and by failing to give employer opportunity to respond to employee's submissions. D.C. Code 1981, § 1-1509(b). *Hilton Hotels Corp. v. District of Columbia Dep't of Employment Services*, 531 A.2d 999, 1987 D.C. App. LEXIS 453 (1987).

Ex parte communications between Zoning Commission staff and various developers during rule-making proceeding relating to Georgetown waterfront did not violate requirements of District of Columbia Administrative Procedure Act or due process, and did not deny a fair hearing. D.C. Code §§ 1-1501 et seq., 5-413 et seq. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

Mind of decider should not be swayed by evidence which is not communicated to both parties and which they are not given an opportunity to controvert. D.C. Code § 1-1509(b). *Quick v. Department of Motor Vehicles*, 331 A.2d 319, 1975 D.C. App. LEXIS 309 (1975).

Failure to provide hearing.

Court had jurisdiction to review order of District of Columbia Zoning Commission granting preliminary approval to planned unit development where Commission violated petitioners' rights under the Administrative Procedure Act by failing to hold a hearing in compliance therewith, despite claim that the order was not the final step in administrative process and there had been no exhaustion of administrative remedies. D.C. Code §§ 1-1501 et seq., 1-1509. *Capitol Hill Restoration Soc. v. Zoning Com.*, 287 A.2d 101, 1972 D.C. App. LEXIS 339 (1972).

Findings of fact and conclusions of law—In general.

Agency's legal conclusions are entitled to less deference on appeal than its factual findings because of the reviewing court's legal expertise. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*,

862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

The weight to be accorded to hearsay evidence in an administrative hearing ranges from minimal to substantial based on a case-by-case evaluation of the reliability and the probative value of the evidence. *Compton v. D.C. Bd. of Psychology*, 858 A.2d 470, 2004 D.C. App. LEXIS 456 (2004).

The circumstances under which hearsay rises to the level of substantiality in an administrative hearing are not ascertained by any definitive rule of law, but rather by a set of considerations applied to the particular facts of each case. *Compton v. D.C. Bd. of Psychology*, 858 A.2d 470, 2004 D.C. App. LEXIS 456 (2004).

When making her factual findings in workers' compensation cases, the hearing examiner, as trier of fact, is entitled to draw reasonable inferences from the evidence presented. *Muhammad v. District of Columbia Dep't of Empl. Servs.*, 774 A.2d 1107, 2001 D.C. App. LEXIS 171 (2001).

Workers' compensation case would be remanded to agency to make the required findings of fact since the compensation order inadequately explored whether claimant's S1 radiculopathy was a disability and, if so, whether this medical condition was causally related to claimant's work injury. D.C. Code 1981, § 1-1509(e). *Olson v. District of Columbia Dep't of Empl. Servs.*, 736 A.2d 1032, 1999 D.C. App. LEXIS 202 (1999).

In contested cases the administrative decision must state findings of fact on each material, contested factual issue, those findings must be based on substantial evidence and the conclusions of law must follow rationally from the findings. D.C. Code 1981, § 1-1509(e). *Perkins v. District of Columbia Dep't of Employment Services*, 482 A.2d 401, 1984 D.C. App. LEXIS 509 (1984).

Administrative agencies may express their conclusions of law in terms of statutory criteria provided agency does not fail to make adequate findings on material contested issues. D.C. Code § 1-1509(e). *Lee v. District of Columbia Zoning Com.*, 411 A.2d 635, 1980 D.C. App. LEXIS 234 (1980).

Wording, content and omissions of findings of administrative agency are controlling on appeal. D.C. Code § 1-1509(e). *Newsweek Magazine v. District of Columbia Com. on Human Rights*, 376 A.2d 777, 1977 D.C. App. LEXIS 444 (1977).

Major purpose of requiring findings of fact and conclusions of law by agency is to enable reviewing court to decide whether decision follows as a matter of law from facts stated as its basis, and also whether facts so stated have any substantial support in evidence. D.C. Code § 1-

1501 et seq. *Woodridge Nursery School v. Jessup*, 269 A.2d 199, 1970 D.C. App. LEXIS 340 (App. 1970).

— **Collateral or immaterial issues, findings of fact and conclusions of law.**

To be material so as to require written findings of fact and conclusions of law by administrative agency, issue must be one that agency had to consider as part of its decision-making process. D.C. Code 1981, § 1-1509(e). *Daro Realty, Inc. v. District of Columbia Zoning Com.*, 581 A.2d 295, 1990 D.C. App. LEXIS 251 (1990).

An administrative agency does not have to make findings of fact upon contentions that are collateral or immaterial. D.C. Code § 1-1509(e). *Lee v. District of Columbia Zoning Com.*, 411 A.2d 635, 1980 D.C. App. LEXIS 234 (1980).

— **Necessity, findings of fact and conclusions of law.**

Requirement of District of Columbia Administrative Procedure Act that agency decisions be accompanied by findings of fact and supported by substantial evidence imposes upon agency duty to make findings of basic fact upon which agency decision rests. D.C. Code 1981, § 1-1509(e). *Washington Gas Light Co. v. Public Service Com.*, 452 A.2d 375, 1982 D.C. App. LEXIS 476 (1982), writ of certiorari denied by 462 U.S. 1107, 103 S. Ct. 2454, 77 L. Ed. 2d 1334, 1983 U.S. LEXIS 419, 51 U.S.L.W. 3871 (1983).

Ultimate conclusion of administrative agency must be supported by findings of fact and findings must be supported by substantial evidence. D.C. Code § 1-1509(e). *Newsweek Magazine v. District of Columbia Com. on Human Rights*, 376 A.2d 777, 1977 D.C. App. LEXIS 444 (1977).

— **Sufficiency of evidence to support findings of fact and conclusions of law.**

"Substantial evidence" supporting an agency decision is relevant evidence which a reasonable trier of fact would find adequate to support a conclusion. *Wash. Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

It is not the function of the reviewing court to superimpose its own opinion over the findings of the agency, but only to determine whether the agency's decision is supported by substantial evidence. *Davidson v. Office of Empl. Appeals*, 886 A.2d 70, 2005 D.C. App. LEXIS 546 (2005).

As long as agency decisions are supported by substantial evidence in the record, they must be affirmed notwithstanding that there may be contrary evidence in the record. *Davidson v. Office of Empl. Appeals*, 886 A.2d 70, 2005 D.C. App. LEXIS 546 (2005).

"Substantial evidence" is relevant evidence which a reasonable trier of fact would find adequate to support a conclusion. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

In evaluating evidence to determine whether an injury or disabling condition is work-related, an administrative agency must take into account the testimony of a treating physician, which is preferred ordinarily over that of a physician retained solely for the litigation; however, when there are conflicting medical opinions, the fact finder may reject the treating physician's opinion in favor of the opinion of another physician, but if agency does so, it must provide reasons for rejecting the opinion of the treating physician. *Beckman v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

Neighbors' allegation that Board of Zoning Adjustment (BZA) had not noticed that testimony of neighbors' traffic expert had not been tape recorded did not establish that Board paid inadequate attention to the evidence when it issued special exception for private school in residential zone. *Neighbors Against Foxhall Gridlock v. D.C. Bd. of Zoning Adjustment*, 792 A.2d 246, 2002 D.C. App. LEXIS 43 (2002).

Administrative Procedure Act requires that agency's findings be supported by reliable, probative and substantial evidence, and that its legal conclusions flow rationally from agency's findings. D.C. Code 1981, § 1-1509(e). *John Doe v. District of Columbia Com. on Human Rights*, 624 A.2d 440, 1993 D.C. App. LEXIS 93 (1993).

Findings of fact and conclusions of law of an agency must be supported by reliable, probative and substantial evidence. D.C. Code 1951, § 1-1509(e). *District of Columbia Public Employee Relations Bd. v. District of Columbia Metro. Police Dep't*, 593 A.2d 641, 1991 D.C. App. LEXIS 185 (1991).

Substantial evidence to support the action of the trial board with respect to tenure of an officer of the District of Columbia requires such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. D.C. Code 1981, § 1-1502(8)(B). *Barry v. Holderbaum*, 454 A.2d 1328, 1982 D.C. App. LEXIS 516 (1982).

— **Sufficiency, findings of fact and conclusions of law.**

To pass muster, an administrative agency decision must state findings of fact on each material, contested factual issue; those findings must be supported by substantial evidence in the agency record; and the agency's conclusions of law must follow rationally from its findings. *Murchison v. D.C. Dep't of Pub. Works*, 813 A.2d 203, 2002 D.C. App. LEXIS 736 (2002).

Administrative decisions in contested cases must state findings of fact on each material, contested factual issue, those findings must be based on substantial evidence, and the conclusions of law must follow rationally from the findings. *Fontenot v. D.C. Dep't of Empl. Servs.*, 804 A.2d 1104, 2002 D.C. App. LEXIS 484 (2002).

For administrative agency decision to "pass muster" under District of Columbia Administrative Procedure Act (DCAPA), agency's decision must state findings of fact on each material, contested factual issue, and those findings must be based on substantial evidence, and the conclusions of law must flow rationally from the findings. D.C. Code 1981, § 1-1501 et seq. *King v. District of Columbia Dep't of Empl. Servs.*, 742 A.2d 460, 1999 D.C. App. LEXIS 285 (1999).

To pass muster under District of Columbia Administrative Procedure Act (DCAPA), agency's decision must state findings of fact on each material, contested factual issue, those findings must be based on substantial evidence, and conclusions of law must flow rationally from the findings. D.C. Code 1981, § 1-1501 et seq. *Washington Times v. District of Columbia Dep't of Empl. Servs.*, 724 A.2d 1212, 1999 D.C. App. LEXIS 34 (1999).

A mere summary of the evidence will not satisfy requirement that every agency decision be in writing and accompanied by findings of fact and conclusions of law. D.C. Code 1981, § 1-1509(e). *Braddock v. Smith*, 711 A.2d 835, 1998 D.C. App. LEXIS 100 (1998).

Administrative agency's findings that merely summarize testimony are insufficient; neither repetition of statutory language nor simple summary of evidence satisfy requirements of Administrative Procedure Act. D.C. Code 1981, § 1-1509(e). *Hedgman v. District of Columbia Hackers' License Appeal Bd.*, 549 A.2d 720, 1988 D.C. App. LEXIS 195 (1988).

When administrative agency cloaks paraphrase of relevant regulation as factual finding, reviewing court has no basis for determining whether conclusions of law follow rationally from findings of fact. D.C. Code 1981 § 1-1509(e). *Hedgman v. District of Columbia Hackers' License Appeal Bd.*, 549 A.2d 720, 1988 D.C. App. LEXIS 195 (1988).

For agency's findings in contested administrative cases to be adequate, agency must make findings on all contested issues material to the underlying substantive statute or rule, its findings must be supported by substantial evidence apparent from the record as a whole and agency's conclusions of laws must be derived rationally from findings which are in accord with the underlying statute. D.C. Code §§ 1-1509, 1-1509(e). *Spevak v. District of Columbia Alcoholic Beverage Control Board*, 407 A.2d 549, 1979 D.C. App. LEXIS 449 (1979).

Generalized, conclusory or incomplete findings of administrative agency will not suffice as findings of fact and there must be finding on each material fact necessary to support conclusions of law. D.C. Code § 1-1509(e). *Newsweek Magazine v. District of Columbia Com. on Human Rights*, 376 A.2d 777, 1977 D.C. App. LEXIS 444 (1977).

An agency order cannot be permitted to stand unless it is accompanied by findings of fact and conclusions of law on each contested issue, which in turn must be supported by and in accordance with the reliable, probative and substantial evidence; and this requirement is particularly compelling where agency action is predicated upon a licensing act or some other statute which on its face confers great latitude for discretion upon administrative bodies. D.C. Code § 1-1509(e). *Village Books, Inc. v. District of Columbia Board of Appeals & Review*, 296 A.2d 613, 1972 D.C. App. LEXIS 279 (1972).

Historic preservation.

To support finding of special merit justifying demolition of building in historic district, findings of fact must be based on substantial evidence on each material contested issue, and mayor's agent must reach rational conclusions based on those findings. D.C. Code 1981, §§ 1-1509(e), 1-1510(a)(3)(E). *Committee of 100 on Federal City v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 571 A.2d 195, 1990 D.C. App. LEXIS 49 (1990).

In case involving demolition of historic building, determination by mayor's agent that project is of special merit implicitly includes finding that issuance of demolition permit is necessary for proposed project to proceed. D.C. Code 1981, §§ 1-1509(e), 1-1510(a)(3)(E). *Committee of 100 on Federal City v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 571 A.2d 195, 1990 D.C. App. LEXIS 49 (1990).

Landowner was not statutorily entitled to hearing before his property was listed as historic landmark by District of Columbia Historic Preservation Review Board. D.C. Code 1981, §§ 1-1501 et seq., 5-1003(c)(3). *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

Landowner was not constitutionally entitled to full trial-type hearing prior to designation of its property as historic landmark by District of Columbia Historic Preservation Review Board. D.C. Code 1981, §§ 1-1501 et seq., 5-1003(c)(3); U.S. Const. Amend. 5. *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

Judicial notice.

An administrative agency may take judicial notice of its own records. *Majerle Mgmt. v. D.C.*

Rental Hous. Comm'n, 866 A.2d 41, 2004 D.C. App. LEXIS 698 (2004).

Agency may take official notice of its own records. D.C. Code 1981, § 1-1509(b). *Renard v. District of Columbia Dep't of Employment Servs.*, 673 A.2d 1274, 1996 D.C. App. LEXIS 60 (1996).

In reviewing decision by Rental Accommodations and Conversion Division (RACD) voiding rent increases, Rental Housing Commission (RHC) improperly determined that landlord was exempt from rent increase restrictions of Rental Housing Act under res judicata principles; RHC improperly took official notice of entire RACD file in concluding that tenant petitioner had been party to prior proceeding, and prior RACD decision was insufficient to prove that tenant had been party to prior proceeding. D.C. Code 1981, §§ 1-1509(b), 45-2501 et seq. *Johnson v. District of Columbia Rental Hous. Comm'n*, 642 A.2d 135, 1994 D.C. App. LEXIS 81 (1994).

Agency must notify the parties to an administrative proceeding that a material fact is being officially noticed so that the parties have an opportunity to rebut that fact. D.C. Code §§ 1-1509(b), 46-309. *Carey v. District Unemployment Compensation Board*, 304 A.2d 18, 1973 D.C. App. LEXIS 265 (1973).

Judicial review.

— Disposition of appeal, judicial review.

If, on remand, Department of Human Resources failed to meet its burden of supplying substantial evidence in support of its action in reallocating income of operators of vending stands at District of Columbia hospital, principal task of hearing officer would be to make accurate determination of amount by which operators were underpaid. D.C. Code § 1-1509(b); *Randolph-Sheppard Vending Stand Act*, § 1, 20 U.S.C. § 107. *Perry v. District of Columbia Dep't of Human Resources*, 326 A.2d 249, 1974 D.C. App. LEXIS 281 (1974).

— Findings of fact and conclusions of law, judicial review.

An agency's interpretation of a statute is controlling unless it is plainly erroneous or inconsistent with the statute. *Office of the People's Counsel v. PSC of D.C.*, 889 A.2d 1003, 2006 D.C. App. LEXIS 1 (2006).

Generally, Court of Appeals will defer to an agency's interpretation of the statute and regulations it administers unless its interpretation is unreasonable or in contravention of the language or legislative history of the statute and/or regulations. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

In reviewing an agency decision, appellate court must consider: (1) whether the agency made a finding of fact on each material con-

tested issue of fact; (2) whether substantial evidence in the record supports each finding; and (3) whether the conclusions of law follow rationally from the findings. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

The ALJ's findings of fact in a workers' compensation action are binding at all subsequent levels of review unless they are unsupported by substantial evidence, and this is true even if the record contains substantial evidence to the contrary. *Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs.*, 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

If the findings of the Director of the Department of Employment Services are not supported by substantial evidence, they cannot be sustained, and the Court of Appeals is required to set them aside. *Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs.*, 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

The Court of Appeals must uphold the workers' compensation decision of the Director of the Department of Employment Services if it is in accordance with the law and supported by substantial evidence; evidence is substantial when a reasonable mind might accept it as adequate to support a conclusion. *Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs.*, 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

The Court of Appeals must defer to the ALJ's findings of fact in a workers' compensation action. *Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs.*, 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

Beyond its substantial evidence review of the Board of Zoning Adjustment's (BZA) findings, the Court of Appeals' review of a BZA decision is limited to a determination of whether the decision is arbitrary, capricious, or otherwise not in accordance with the law. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 816 A.2d 41, 2003 D.C. App. LEXIS 27 (2003).

The reviewing court affirms an agency's findings of fact and conclusions if they are supported by substantial evidence in the record. *Kirkpatrick v. D.C. Pub. Schs.*, 786 A.2d 586, 2001 D.C. App. LEXIS 253 (2001).

When Court of Appeals reviews agency decision, it does so by assessing whether: agency has made finding of fact on each material contested issue of fact; substantial evidence of record supports each finding; and conclusions legally sufficient to support decision flow rationally from findings. D.C. Code 1981, § 1-1509(e). *Metropolitan Poultry v. District of Columbia Dep't of Empl. Servs.*, 706 A.2d 33, 1998 D.C. App. LEXIS 24 (1998).

Court of Appeals will not disturb agency's decision if it flows rationally from facts which are supported by substantial evidence in record. D.C. Code 1981, §§ 1-1509(e),

1-1510(a)(3)(E). *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs.*, 683 A.2d 470, 1996 D.C. App. LEXIS 214 (1996).

Court of Appeals will affirm agency's findings of fact and conclusions of law as long as they are supported by substantial evidence notwithstanding that there may be contrary evidence in record. D.C. Code 1981, § 1-1509(e). *Ferreira v. District of Columbia Dep't of Employment Servs.*, 667 A.2d 310, 1995 D.C. App. LEXIS 192 (1995).

Court of Appeals' scope of review of agency's orders is defined by substantial evidence standard. D.C. Code 1981, § 1-1509(e). *Harris v. District of Columbia Office of Worker's Compensation*, 660 A.2d 404, 1995 D.C. App. LEXIS 135 (1995).

Court of Appeals' review of agency's findings is limited to inquiry as to whether agency has made finding of fact on each material contested issue of fact, whether substantial evidence of record supports each finding, and whether conclusions legally sufficient to support decision flow rationally from findings. D.C. Code 1981, §§ 1-1501 et seq., 1-1509(e). *Cruz v. District of Columbia Dep't of Employment Servs.*, 633 A.2d 66, 1993 D.C. App. LEXIS 283 (1993).

It is not function of reviewing court under Administrative Procedure Act to superimpose its own opinion over the findings of the agency; obligation of court is to determine whether agency's decision is supported by and in accordance with reliable, probative and substantial evidence. D.C. Code 1981, §§ 1-1501 et seq., 1-1509(e). *DiVincenzo v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, 620 A.2d 868, 1993 D.C. App. LEXIS 41 (1993).

In reviewing agency's decision, court must determine whether agency has made factual findings on each material contested issue, whether such findings are supported by substantial evidence of record, and whether legal conclusions reached flow rationally from findings. D.C. Code 1981, § 1-1509(e). *American University v. District of Columbia Comm'n on Human Rights*, 598 A.2d 416, 1991 D.C. App. LEXIS 287 (1991).

Appellate review of cases under District of Columbia Administrative Procedure Act is limited to determining whether agency's findings are supported by substantial evidence in record considered as a whole or whether decision is arbitrary, capricious, or abuse of discretion. D.C. Code 1981, § 1-1509. *Cooper v. District of Columbia Dep't of Employment Services*, 588 A.2d 1172, 1991 D.C. App. LEXIS 75 (1991).

In reviewing decision of Department of Employment Services, Court of Appeals must determine whether agency's findings are supported by reliable, probative and substantial evidence, and whether its conclusions of law flow rationally from those findings. D.C. Code

1981, § 1-1509(e). *Cooper v. District of Columbia Dep't of Employment Services*, 588 A.2d 1172, 1991 D.C. App. LEXIS 75 (1991).

If administrative agency in a contested case fails to make a finding on a material, contested issue of fact, Court of Appeals cannot fill the gap by making its own determination from record, but must remand case for finding on that issue. D.C. Code 1981, § 1-1509(e). *Colton v. District of Columbia Dep't of Employment Services*, 484 A.2d 550, 1984 D.C. App. LEXIS 547 (1984).

The three components of the substantial evidence requirement with respect to findings of fact under the Administrative Procedure Act are that findings address each material contested issue of fact, that there is sufficient evidence to support the factual findings made, and that there is a rational connection between the findings and the decision reached. D.C. Code 1978 Supp. § 1-1509(e). *Scott v. Police & Firemen's Retirement & Relief Bd.*, 447 A.2d 447, 1982 D.C. App. LEXIS 376 (1982).

In reviewing agency ruling, District of Columbia Court of Appeals must determine whether agency has made finding of fact on each material contested issue of fact, whether substantial evidence of record supports each finding and whether conclusions of law follow rationally from the findings. D.C. Code 1981, §§ 1-1509(e), 1-1510(a)(3)(A, E). *American Combustion, Inc. v. Minority Business Opportunity Com.*, 441 A.2d 660, 1982 D.C. App. LEXIS 274 (1982).

Decisions by administrative agencies of District of Columbia must satisfy substantial evidence test which is derived from contested cases provision of D.C. Administrative Procedure Act. D.C. Code 1973, § 1-1509(e). *Bakers Local Union v. District of Columbia Bd. of Zoning Adjustment*, 437 A.2d 176, 1981 D.C. App. LEXIS 393 (1981).

District of Columbia's Administrative Procedure Act's substantial evidence test requires that the agency make findings of basic facts on all material contested issues, that those findings, when taken together, rationally lead to conclusions of law which are legally sufficient to support the decision, and that each basic finding is supported by substantial evidence. D.C. Code § 1-1509(e). *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

In order to comply with statutory requirement that administrative agency's findings of fact and conclusions of law be supported by substantial evidence, findings must address each material contested issue of fact, there must be sufficient evidence to support factual findings made and there must be a rational connection between findings made by agency and decision that it reaches. D.C. Code § 1-1509(e). *Lee v. District of Columbia Zoning*

Com., 411 A.2d 635, 1980 D.C. App. LEXIS 234 (1980).

When findings of basic facts are each supported by sufficient evidence and, when taken together, rationally lead to conclusions of law and an agency decision consistent with governing statute, the Court of Appeals should affirm that decision; agency is not legally required to explain, in addition, why it favored one witness or one statistic over another. D.C. Code § 1-1509(e). *Citizens Asso. of Georgetown, Inc. v. District of Columbia Zoning Com.*, 402 A.2d 36, 1979 D.C. App. LEXIS 364 (1979).

"Substantial evidence" test in statute requiring that every agency decision be accompanied by written findings of fact and conclusions of law supported by and in accordance with reliable, probative, and substantial evidence requires that agency make written findings of basic fact on all material contested issues, that such findings, taken together, must rationally lead to conclusions of law which, under governing statute, are legally sufficient to support agency's decision, and that each finding of fact must be supported by evidence sufficient to convince reasonable minds of its adequacy. D.C. Code § 1-1509(e). *Citizens Asso. of Georgetown, Inc. v. District of Columbia Zoning Com.*, 402 A.2d 36, 1979 D.C. App. LEXIS 364 (1979).

Review of administrative decisions requires that the facts flow rationally from the evidence and the conclusions rationally from the facts. D.C.C.E §§ 1-1509(e), 1-1510. *Kober v. District Unemployment Compensation Board*, 384 A.2d 633, 1978 D.C. App. LEXIS 447 (1978).

Under District of Columbia Administrative Procedure Act, agency findings of fact and conclusions of law which are challenged on evidentiary grounds must be affirmed if supported by and in accordance with reliable, probative and substantial evidence in the whole administrative record. D.C. Code §§ 1-1509(e), 1-1510(3)(E). *Jones v. Police & Firemen's Retirement & Relief Board*, 375 A.2d 1, 1977 D.C. App. LEXIS 446 (1977).

— In general.

Findings of fact, conclusions of law and reasoned application of an agency's policy, if any, must be clearly reflected in an administrative agency's decision where further administrative or judicial review is provided by statute. D.C. Code §§ 1-1509(d, e), 46-311(f). *Hill v. District of Columbia Unemployment Compensation Board*, 279 A.2d 501, 1971 D.C. App. LEXIS 180 (1971).

— Presumptions and burden of proof, judicial review.

Under District of Columbia Administrative Procedure Act, there is presumption of correctness of agency's decision, and party seeking review of decision bears burden of demonstrat-

ing error, which includes providing record sufficient to show that agency's decision is erroneous. D.C. Code 1981, § 1-1509. *Cooper v. District of Columbia Dep't of Employment Services*, 588 A.2d 1172, 1991 D.C. App. LEXIS 75 (1991).

Party could not carry his burden of demonstrating on judicial review that agency's factual findings were not supported by substantial evidence in record where transcript of administrative hearing was not included in appellate record and where only four of five exhibits were included in record. D.C. Code 1981, § 1-1509. *Cooper v. District of Columbia Dep't of Employment Services*, 588 A.2d 1172, 1991 D.C. App. LEXIS 75 (1991).

— Record, judicial review.

If an administrative agency fails to make a finding on a material, contested issue, Court of Appeals cannot fill the gap by making its own determination from the record, but must remand the case for findings on that issue. *Fontenot v. D.C. Dep't of Empl. Servs.*, 804 A.2d 1104, 2002 D.C. App. LEXIS 484 (2002).

Agency determinations of applicable statutory provisions must reflect the careful legal and policy analysis required in making choices among several competing statutory interpretations, each of which has substantial support, and the record must provide evidence that the agency considered the language, structure, or purpose of the statute when selecting an interpretation. *Kirkpatrick v. D.C. Pub. Schs.*, 786 A.2d 586, 2001 D.C. App. LEXIS 253 (2001).

When reviewing agency decisions, appellate court must determine whether substantial evidence exists in the record to support the decision, or whether the decision is arbitrary, capricious, or an abuse of discretion. D.C. Code 1981, §§ 1-1509(e), 1-1510(a)(3)(A, E). *Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n*, 649 A.2d 1076, 1994 D.C. App. LEXIS 208 (1994).

Although an agency's posthearing supplementation of the record on review accommodates one of the purposes of on-the-record administrative decision-making, namely, to facilitate judicial review, it does nothing to further the fundamental purpose of the on-the-record requirement, namely, to assure the parties an adequate opportunity at the administrative proceeding to challenge and respond to the evidence which forms the basis of the agency's decision. D.C. Code 1981, §§ 1-1148(e), 1-1509(b). *M.B.E., Inc. v. Minority Business Opportunity Com.*, 485 A.2d 152, 1984 D.C. App. LEXIS 558 (1984).

In a contested case, whenever an administrative agency fails to make a finding on a material contested issue, Court of Appeals cannot properly fill the gap itself by inferring findings on a party's objection through inspection of record,

agency's other findings and ultimate decision. D.C. Code § 1-1509(e). *Lee v. District of Columbia Zoning Com.*, 411 A.2d 635, 1980 D.C. App. LEXIS 234 (1980).

— Standard of review.

Court of Appeals will uphold an agency's decision if it is based upon "substantial evidence," which means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

Agency decision must rationally follow from facts. D.C. Code 1981, § 1-1509(e). *Washington Gas Light Co. v. Public Service Com.*, 452 A.2d 375, 1982 D.C. App. LEXIS 476 (1982), writ of certiorari denied by 462 U.S. 1107, 103 S. Ct. 2454, 77 L. Ed. 2d 1334, 1983 U.S. LEXIS 419, 51 U.S.L.W. 3871 (1983).

Labor and employment.

— In general.

Director of Department of Employment Services (DOES) was not entitled to adopt and apply to employer a new rule that an employer was required to provide an employee with notice and an opportunity to cure before applying for suspension of disability benefits; such a rule was not expressed in any statute or existing regulation, nor was it foreshadowed in previous DOES rulings, and thus, employer could not reasonably have been aware of such a requirement. *Epstein v. D.C. Dep't of Empl. Servs.*, 850 A.2d 1140, 2004 D.C. App. LEXIS 272 (2004).

Director of the Department of Employment Services must defer to the ALJ's findings in a workers' compensation action even if, had he been the trier of fact, he might have reached a contrary result based on an independent review of the record. *Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs.*, 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

The Director of the Department of Employment Services is bound by the ALJ's findings of fact in a workers' compensation action if those findings were supported by substantial evidence in the record, considered as a whole. *Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs.*, 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

Director of the Department of Employment Services could not rely on medical opinions of workers' compensation claimant's doctor when reviewing ALJ's decision, as ALJ had rejected opinions, saying "I reject the medical opinions and disability rating assessed" by doctor and gave ample reasons for rejecting those opinions. *Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs.*, 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

Office of Employee Appeals (OEA) may not substitute its judgment for that of agency;

OEA's review of agency decision is limited to determination of whether decision was supported by substantial evidence, whether there was harmful procedural error, or whether decision was in accordance with law or applicable regulations. *D.C. Metro. Police Dep't v. Pinkard*, 801 A.2d 86, 2002 D.C. App. LEXIS 319 (2002).

Office of Employee Appeals (OEA), as reviewing authority, must generally defer to agency's credibility determinations. *D.C. Metro. Police Dep't v. Pinkard*, 801 A.2d 86, 2002 D.C. App. LEXIS 319 (2002).

Before Contract Appeals Board dismissed physician's breach of employment contract claim against Department of Human Services (DHS) for his failure to comply in good faith with discovery process, Board should have given physician notice that his claim might be dismissed and opportunity for hearing to dissuade Board from taking such action. 36 D.C. Register 2694, 2698, 2699. *Abia-Okon v. District of Columbia Contract Appeals Bd.*, 647 A.2d 79, 1994 D.C. App. LEXIS 155 (1994).

University instructor, who lost his position as result of reduction in force, was given adequate notice and opportunity to be heard, and thus was not denied due process, even if some property right were implicated by reduction in force action; instructor could invoke general equitable jurisdiction of superior court so that he would be afforded right to hearing after reduction, and instructor was given at least 90 days advance notice of reduction in force action, although he was not permitted to appeal to the Office of Employee Appeals. D.C. Code 1981, §§ 1-1501 et seq., 1-1510(a). *Davis v. University of Dist. of Columbia*, 603 A.2d 849, 1992 D.C. App. LEXIS 34 (1992).

Office of Human Rights (OHR) was required to determine nature of employer's obligation under "family responsibilities" provision of Human Rights Act before OHR could make finding as to probable cause for belief that employer violated the Act when it discharged employee. D.C. Code 1981, § 1-2502(12, 23). *Simpson v. District of Columbia Office of Human Rights*, 597 A.2d 392, 1991 D.C. App. LEXIS 266 (1991).

Although the conduct of plaintiff deans of a university may have justified their removal from their administrative positions, the summary nature of their removal without giving them notice and an opportunity to respond was violative of their rights to procedural due process guaranteed by the Fifth Amendment. *Allen v. Ford*, 116 WLR 1869 (Super. Ct. 1988).

— Wage and hours, labor and employment.

Even if notice requirements of Administrative Procedure Act were applicable with regard to proposed revised minimum wage order of Minimum Wage and Industrial Safety Board,

such requirements were met where notice of proposed order was published and such notice set forth time and place of public hearing, contained summary of major provisions of proposed order and stated that such order, recommendations of ad hoc committee, wage data, cost of living budgets and related materials would be available at hearing and prior thereto at office of Board. D.C. Code §§ 1-1501 et seq., 1-1509, 36-401 et seq., 36-407(a, c), 36-408(d). *Hotel Asso. of Washington v. District of Columbia Minimum Wage & Industrial Safety Board*, 318 A.2d 294, 1974 D.C. App. LEXIS 395 (1974).

All interested parties are entitled to know and District of Columbia Court of Appeals, on review, must know basis and reasons for action of Minimum Wage and Industrial Safety Board in issuing wage order. 5 U.S.C. § 557(c); D.C. Code §§ 1-1509(c), 36-406(e), 36-409(a). *Allentuck v. District of Columbia Minimum Wage & Industrial Safety Bd.*, 261 A.2d 826, 1969 D.C. App. LEXIS 368 (App. 1969).

Findings of fact consisting of only finding relating to general minimum weekly wage of \$81.28 as sufficient to provide adequate maintenance and to protect health and finding that minimum wage in retail trade occupation should not be less than \$2.00 an hour based on prescribed 40-hour work week were insufficient to support wage order issued by Minimum wage and Industrial Safety Board. 5 U.S.C. § 557(c); D.C. Code §§ 1-1509(c), 36-406(e), 36-409(a). *Allentuck v. District of Columbia Minimum Wage & Industrial Safety Bd.*, 261 A.2d 826, 1969 D.C. App. LEXIS 368 (App. 1969).

Landlord and tenant.

— In General.

To extent that former occupants' suit against property owner and District depended upon establishment of direct landlord-tenant relationship, collateral estoppel operated to preclude recovery for wrongful eviction; after Rental Housing Commission dismissed occupants' tenant petition for lack of a direct landlord-tenant relationship, occupants failed to move for reconsideration and failed to appeal decision. *Wilson v. Hart*, 829 A.2d 511, 2003 D.C. App. LEXIS 485 (2003).

Commission on Human Rights order, which dismissed tenant's complaint charging that attempt to evict him constituted discriminatory retaliation and which contained general and conclusory findings but contained no findings with regard to the many disputed instances of harassment and discrimination nor with regard to basic facts such as the reasons for eviction, did not meet Administrative Procedure Act requirement that such an order contain findings of fact consisting of a concise statement and conclusions on each contested

issue of fact. D.C. Code § 1-1509(e). *Miller v. District of Columbia Com. on Human Rights*, 339 A.2d 715, 1975 D.C. App. LEXIS 355 (1975).

Findings of Commission on Human Rights, which dismissed tenant's complaint charging that attempt to evict him constituted discriminatory retaliation, were not sufficiently specific to satisfy Administrative Procedure Act requirements, which is to effect that Commission's order must contain findings of fact consisting of a concise statement of conclusions on each contested issue of fact, merely on basis of assertion that when Commission's findings were read together with relevant testimony adduced at hearing, there could be no doubt about basis of Commission's ruling. D.C. Code § 1-1509(e). *Miller v. District of Columbia Com. on Human Rights*, 339 A.2d 715, 1975 D.C. App. LEXIS 355 (1975).

— Rent control, landlord and tenant.

Rental Housing Commission's loss of documents submitted by housing provider did not relieve provider of its burden to establish that expense data cited in hardship petition was accurate. D.C. Code 1981, § 1-1509(c); D.C. Mun. Regs. title 14, § 4209.16. *Jerome Mgmt. v. District of Columbia Rental Hous. Comm'n*, 682 A.2d 178, 1996 D.C. App. LEXIS 170 (1996).

Landlord-initiated improvement petition, seeking rent increase, is contested case within meaning of Administrative Procedure Act, and landlord has burden of proof, which it can meet only by affirmatively presenting evidence. D.C. Code 1981, §§ 1-1501 to 1-1542, 45-2592. *Hampton Courts Tenants' Ass'n v. District of Columbia Rental Housing Com.*, 573 A.2d 10, 1990 D.C. App. LEXIS 89 (1990).

Notice accompanying tenant petitions in rent control case, informing landlord that any willful violation of rent control act or failure to comply might result in a fine of not more than \$5,000, was sufficient notice that willful violation of the law was at issue, to satisfy due process and statutory requirements. D.C. Code 1981, § 1-1509(a); U.S. Const. Amend. 5. *Revithes v. District of Columbia Rental Housing Com.*, 536 A.2d 1007, 1987 D.C. App. LEXIS 522 (1987).

Where landlord seeks to obtain rent increase by hardship petition pursuant to D.C. Code 1981, § 45-1517(c), burden of proof rests upon proponent of petition; evidence must establish that expense data, i.e., rate of return, cited in petition is accurate. D.C. Code 1981, § 1-1509(b). *Liuksila v. District of Columbia Rental Housing Com.*, 503 A.2d 666, 1986 D.C. App. LEXIS 265 (1986).

Even though Rental Housing Commission's discretion to determine rent ceilings under Rental Accommodations Act of 1975 is sharply

limited by statutory formula, Commission is obliged, under statute which allows any contested administrative proceeding to be disposed of by agreed settlement, at least to consider compromise proposals which appear consistent with Act and are acceptable to both landlord and active representative group of tenants; however, absent unanimous consent of parties or voluntary settlement procedure whereby specified percentage of tenants can bind all tenants to agreement, Commission need not adopt compromise proposal. D.C. Code 1978 Supp. § 45-1649; D.C. Code 1981, §§ 1-1509(a), 45-1526. *Proctor v. District of Columbia Rental Housing Com.*, 484 A.2d 542, 1984 D.C. App. LEXIS 550 (1984).

Decision of Rental Housing Commission, adopting or rejecting compromise proposal, shall contain findings of fact and conclusions of law sufficient for review by Court of Appeals. D.C. Code 1981, §§ 1-1509(e), 1-1510. *Proctor v. District of Columbia Rental Housing Com.*, 484 A.2d 542, 1984 D.C. App. LEXIS 550 (1984).

Rental Housing Commission had duty under Rental Accommodations Act of 1975 to determine maximum allowable increase in rentals and, but for applicability of statute which allows any contested administrative proceeding to be disposed of by agreed settlement, may not authorize increases in excess of that statutory maximum. D.C. Code 1978 Supp. § 45-1649; D.C. Code 1981, § 1-1509(a). *Proctor v. District of Columbia Rental Housing Com.*, 484 A.2d 542, 1984 D.C. App. LEXIS 550 (1984).

Where landlord elects to seek rent adjustment through hardship petition, landlord bears burden of proof. D.C. Code 1981, §§ 1-1509(b), 45-1517(c). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

It is function of rent administrator as fact finder to evaluate evidence and determine whether it is sufficient to support landlord's petition for upward adjustment of rent ceilings. D.C. Code 1981, §§ 1-1509(b), 45-1517(c). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Regulations which govern landlords' hardship petitions for upward adjustment of rent ceilings give notice of heavy burden of proof placed on landlords to provide adequate documentation to support their petitions. D.C. Code 1981, §§ 1-1509(b), 45-1517(c). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Landlord was not entitled to remand of hardship petition for upward adjustment of rent ceilings to permit reconsideration of claim for management fees for which it failed to provide sufficient documentation at hearing before rent

administrator. D.C. Code 1981, §§ 1-1509(b), 45-1517(c). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Given landlord's burden of proof in connection with his "hardship petition," two requests for specific documentation in form of cancelled checks by Rental Administrator, and ease with which such requests could have been satisfied, there was no error in dismissing petition for failure of landlord to produce such cancelled checks; moreover, fact that particular Rental Administrator who sat in case and other Rental Administrators in other cases granted petitions in the past without evidence in form of cancelled checks did not require a different result, as landlord had imputed notice of the requirement, and Rental Housing Commission is not bound by prior decisions of Rental Administrators. D.C. Code 1981, § 1-1509(b); D.C. Code 1980 Supp. §§ 45-1687(a, c), 45-1693. *Chapin Street Joint Venture v. District of Columbia Rental Housing Com.*, 466 A.2d 414, 1983 D.C. App. LEXIS 470 (1983).

Decision of Rental Housing Commission requiring external verification of payment of claimed expenses in form of landlord's cancelled checks evidencing payment of his expenses to support landlord's "hardship petition" was eminently reasonable, as cancelled checks are generally available to and within control of a landlord. D.C. Code 1981, § 1-1509(b); D.C. Code 1980 Supp. §§ 45-1687(a, c), 45-1693. *Chapin Street Joint Venture v. District of Columbia Rental Housing Com.*, 466 A.2d 414, 1983 D.C. App. LEXIS 470 (1983).

In proceedings by landlords for hardship rental increases under Rental Accommodations Act of 1975, where documentation of costs incurred required extensive review, act of hearing examiner holding record open for posthearing submission of documents, coupled with full opportunity for opposing parties to comment, operated to preserve fundamental rights of both parties and facilitate ends of Administrative Procedure Act without derogating any express provision of the Rental Accommodations Act. D.C. Code §§ 1-1501 et seq., 45-1631 to 45-1674. *Tenants Council of Tiber Island-Carrollsborg Square v. District of Columbia Rental Accommodations Com.*, 426 A.2d 868, 1981 D.C. App. LEXIS 213 (1981).

Rental Accommodations Commission is precluded from imposing sanction on a person who has not been made a party to the complaint being heard by the Commission and who has not been afforded the procedural guarantees of the Administrative Procedure Act and Commission regulation. D.C. Code §§ 1-1502(10), 1-1509. *Ammerman v. District of Columbia Rental Accommodations Com.*, 375 A.2d 1060, 1977 D.C. App. LEXIS 350 (1977).

Where one partner was never named as a party in tenants' petition charging exaction of excessive rent in violation of Rental Accommodations Act and was not given notice of hearing on the petition or an opportunity to be heard in his own behalf, imposition of \$50 fine was improper; statutory notice provision relating to partnerships was inapplicable since neither the partnership nor general partner was named as a party to the proceeding. D.C. Code §§ 1-1502(10), 1-1509, 41-311. *Ammerman v. District of Columbia Rental Accommodations Com.*, 375 A.2d 1060, 1977 D.C. App. LEXIS 350 (1977).

Review by the Rental Accommodations Commission of decisions on rental adjustment made by the acting rent administrator is limited to whether decision of rent administrator is arbitrary, capricious, an abuse of discretion not in accordance with law, or unsupported by substantial evidence in the record; and this is an appellate review standard, rather than an initial decisions standard. D.C. Code §§ 1-1501 et seq., 1-1509(d). *Meier v. District of Columbia Rental Accommodations Com.*, 372 A.2d 566, 1977 D.C. App. LEXIS 460 (1977).

Clear distinction between functions of acting rent administrator and Rental Accommodations Commission is made; authority to decide rental adjustment petitions is vested in the administrator while authority to decide administrative appeals is vested in the Commission. D.C. Code § 1-1509(d). *Meier v. District of Columbia Rental Accommodations Com.*, 372 A.2d 566, 1977 D.C. App. LEXIS 460 (1977).

Where a decision rendered by acting rent administrator as to permissible rent was based on evidence presented before hearing examiner, and where hearing examiner did not issue to the parties a proposed order, including findings of fact and conclusions of law, nor did parties have opportunity to file exceptions, present arguments, and direct the acting rent administrator's attention to designated portions of record prior to entry by him of his "decision", rent administrator's decision was a "final order" entered without compliance with procedural requirements of the Administrative Procedure Act. D.C. Code §§ 1-1501 et seq., 1-1509(d). *Meier v. District of Columbia Rental Accommodations Com.*, 372 A.2d 566, 1977 D.C. App. LEXIS 460 (1977).

The District of Columbia Rental Accommodations Commission has the right to issue regulations empowering hearing examiners to conduct hearings on permissible rent as statutes clearly provide vehicle for utilization of such hearing examiners to hear the evidence with the decision being made by another. D.C. Code §§ 1-1501 et seq., 1-1509(d). *Meier v. District of Columbia Rental Accommodations Com.*, 372 A.2d 566, 1977 D.C. App. LEXIS 460 (1977).

Although decisions on rental adjustments are reviewable by the Rental Accommodations Commission, the acting rent administrator is the decision maker. D.C. Code § 1-1509(d). *Meier v. District of Columbia Rental Accommodations Com.*, 372 A.2d 566, 1977 D.C. App. LEXIS 460 (1977).

Liquors licenses and taxes.

Petitioner, whose liquor license renewal was denied by alcoholic beverage control board, was not denied due process, even though proposed decision was issued without all board members being present during evidentiary hearing and final decision was issued even though board members viewed different evidentiary findings, where, after panel, including two board members who were present at protest hearing, issued proposed decision and order listing findings of facts and conclusions of law, petitioner filed exception, was afforded hearing before issuance of final order, and final order was issued based on extensive findings of fact produced in proposed decision. *Gallothom, Inc. v. D.C. Alcoholic Bev. Control Bd.*, 820 A.2d 530, 2003 D.C. App. LEXIS 142 (2003).

In reviewing findings of Alcoholic Beverage Control Board, Court of Appeals applies substantial evidence test. D.C. Code 1981, § 1-1509(e). *LCP, Inc. v. District of Columbia Alcoholic Beverage Control Bd.*, 499 A.2d 897, 1985 D.C. App. LEXIS 525 (1985).

Court of Appeals had to affirm Alcoholic Beverage Control Board's grant of application to transfer liquor license from one of the applicant's stores to another, unless the Court found that such grant was unsupported by substantial evidence. D.C. Code 1981, § 1-1509(e). *Donnelly v. District of Columbia Alcoholic Beverage Control Bd.*, 452 A.2d 364, 1982 D.C. App. LEXIS 474 (1982).

"Substantial evidence" test, in regard to review by the Court of Appeals of the Alcoholic Beverage Control Board's grant of a liquor license transfer application, requires: (1) the Board to make written findings of "basic facts" on all material contested issues; (2) these findings, taken together, must rationally lead to conclusions of law which, under the governing statute, are legally sufficient to support the Board's decision; and (3) each basic finding must be supported by evidence sufficient to convince reasonable minds of its adequacy. D.C. Code 1981, § 1-1509(e). *Donnelly v. District of Columbia Alcoholic Beverage Control Bd.*, 452 A.2d 364, 1982 D.C. App. LEXIS 474 (1982).

In considering application for a class "D" liquor license, the Alcoholic Beverage Control Board did not abuse its discretion in excluding as irrelevant evidence of applicant's past ownership of a duly licensed retail shop located upstairs from premises, which had sold a variety of items, including imported clothing and

jewelry, and "drug paraphernalia," despite contention that retail shop reflected upon the appropriateness of the premises, where premises did not include the second floor of the building where retail shop had been located and Board construed the term "surroundings" to include only existing surroundings, and not past or former surroundings. D.C. Code 1978 Supp. § 1-1509(b); D.C. Code 1973, § 25-115(a), par. 6. *Haight v. District of Columbia Alcoholic Beverage Control Bd.*, 439 A.2d 487, 1981 D.C. App. LEXIS 410 (1981).

In considering application for a class "D" liquor license, the Alcoholic Beverage Control Board did not abuse its discretion in excluding as irrelevant evidence that applicant had previously owned a duly licensed retail shop which had sold a variety of items, including imported clothing and jewelry, and "drug paraphernalia," despite contention that evidence reflected on good-moral character and general fitness of the applicant, where Board's determination that only evidence it would consider relevant to applicant's "moral character" or fitness would be evidence of illegal activity was reasonable and business activity in question was lawful. D.C. Code 1978 Supp. § 1-1509(b); D.C. Code 1973, § 25-115(a), par. 1. *Haight v. District of Columbia Alcoholic Beverage Control Bd.*, 439 A.2d 487, 1981 D.C. App. LEXIS 410 (1981).

In considering application for a class "D" liquor license, the Alcoholic Beverage Control Board did not improperly shift burden of proof from applicants to petitioners on issue of good-moral character and general fitness, in that Board accurately characterized the evidence when it stated that there was "no evidence" suggesting a lack of good character on part of the applicant and petitioner's attempt to introduce testimony relating to retail shop selling "drug paraphernalia" above premises did not constitute evidence contrary to the Board's findings, for the Board properly ruled that such testimony was irrelevant. D.C. Code 1978 Supp. § 1-1509(b); D.C. Code 1973, § 25-115(a), par. 1. *Haight v. District of Columbia Alcoholic Beverage Control Bd.*, 439 A.2d 487, 1981 D.C. App. LEXIS 410 (1981).

In proceeding on petition for review of Alcoholic Beverage Control Board's decision to grant Class "C" liquor license to nonprofit private club, petitioner was not entitled to relief on basis of allegation that Board failed to make specific findings of fact on each element of the statutory definition of "club;" it was sufficient that Board properly addressed the questions of fact arising at the hearing and that Board's conclusions were grounded in the evidence. D.C. Code §§ 1-1509(c), 25-103(g). *Citizens Asso. of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board*, 410 A.2d 195, 1979 D.C. App. LEXIS 534 (1979).

Alcoholic Beverage Control Board, which granted class B beverage license, was not required to explain why it chose to rely on some evidence rather than other evidence before it. D.C. Code § 1-1509(e). *Spevak v. District of Columbia Alcoholic Beverage Control Board*, 407 A.2d 549, 1979 D.C. App. LEXIS 449 (1979).

In proceeding in which Alcoholic Beverage Control Board granted class B beverage license, Board's finding to effect that granting the license would not have adverse impact on the neighborhood was supported by substantial evidence. D.C. Code § 1-1509(e). *Spevak v. District of Columbia Alcoholic Beverage Control Board*, 407 A.2d 549, 1979 D.C. App. LEXIS 449 (1979).

If there is substantial evidence to support Alcoholic Beverage Control Board's finding, mere existence of substantial evidence contrary to that finding does not allow Court of Appeals to substitute its judgment for that of the Board. D.C. Code § 1-1509(e). *Spevak v. District of Columbia Alcoholic Beverage Control Board*, 407 A.2d 549, 1979 D.C. App. LEXIS 449 (1979).

In proceeding in which Alcoholic Beverage Control Board granted class B beverage license, conclusion that applicant's site was an appropriate site, considering wishes of persons residing in or owning property in the neighborhood, was supported by substantial evidence. D.C. Code § 1-1509(e). *Spevak v. District of Columbia Alcoholic Beverage Control Board*, 407 A.2d 549, 1979 D.C. App. LEXIS 449 (1979).

Church rector's uncontradicted testimony that most people used one entrance to church supported Alcoholic Beverage Control Board's conclusion that such entrance was the main entrance of the church, within regulation limiting licenses within 400 feet of church measured between nearest street main entrance to licensee and nearest street main entrance to church; thus, since that entrance to church was more than 400 feet from any entrance to proposed licensee, the regulation did not preclude issuance of license. D.C. Code § 1-1509(e). *Heyert v. District of Columbia Alcoholic Beverage Control Board*, 399 A.2d 1309, 1979 D.C. App. LEXIS 325 (1979).

Evidence in hearing on application for retailer's liquor license was insufficient to sustain finding that close business and personal relationship between operators of proposed retail liquor establishment and operators' children who operated adjoining gas station would contribute to a "drink and drive" atmosphere if application were granted. *Heyert v. District of Columbia Alcoholic Beverage Control Board*, 399 A.2d 1309, 1979 D.C. App. LEXIS 325 (1979).

Alcoholic Beverage Control Board's findings of close physical proximity of proposed retail

liquor establishment and gas station, and "the undoubted identification in the minds of existing customers of the gasoline station business with the structure that would house the liquor business" were insufficient to sustain Board's conclusion that granting of application for retailer's liquor license would contribute to a "drink and drive" atmosphere. *Heyert v. District of Columbia Alcoholic Beverage Control Board*, 399 A.2d 1309, 1979 D.C. App. LEXIS 325 (1979).

For purposes of review of Alcoholic Beverage Control Board's findings of fact to determine if they are supported by substantial evidence, "substantial evidence" is more than a mere scintilla; it is such relevant evidence as reasonable mind might accept as adequate to support a conclusion. *Heyert v. District of Columbia Alcoholic Beverage Control Board*, 399 A.2d 1309, 1979 D.C. App. LEXIS 325 (1979).

For purposes of judicial review of Alcoholic Beverage Control Board's denial of application for a retailer's liquor license, in addition to the requisite quantum of evidence, there must be a demonstration in findings of a rational connection between facts found and choice made. *Heyert v. District of Columbia Alcoholic Beverage Control Board*, 399 A.2d 1309, 1979 D.C. App. LEXIS 325 (1979).

Where Alcoholic Beverage Control Board's denial of application for retailer's liquor license was unsupported by substantial evidence, and twice during history of litigation Board had filed motions to remand proceeding to permit applicant to seek reconsideration and to permit Board to make supplemental findings, Court of Appeals would remand proceeding to Board with order to show cause why application should not be granted forthwith. *Heyert v. District of Columbia Alcoholic Beverage Control Board*, 399 A.2d 1309, 1979 D.C. App. LEXIS 325 (1979).

In proceeding on application for issuance of liquor license, District of Columbia Alcoholic Beverage Control Board entered findings which were adequate to address each contested issue, including saturation of liquor licenses, parking in traffic, refuse storage, character of neighborhood, and neighborhood wishes and desires. D.C. Code §§ 1-1509(e), 1-1510, 25-107, 25-115. *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

Substantial evidence supported action of District of Columbia Alcoholic Beverage Control Board in issuing "Class C" liquor license in connection with proposed Irish family restaurant. D.C. Code §§ 1-1509(e), 1-1510(3)(E), 25-111(g). *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

In proceedings on application for issuance of Class C liquor license, District of Columbia

Alcoholic Beverage Control Board was not required to define relevant neighborhood as being coextensive with boundaries of advisory neighborhood commission which opposed issuance of license. D.C. Code §§ 1-1509(e), 1-1510(3)(E), 25-111(g). *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

In proceedings on application for liquor license, District of Columbia Alcoholic Beverage Control Board committed reversible error in failing to comply with applicable statute by giving notice of rescheduled hearing on license application to known remonstrants and by failing to post such notice on applicant's premises. D.C. Code §§ 1-1509(a), 25-115(b). *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

No written findings were required for disposition of petition for reconsideration of transfer order entered by Alcoholic Beverage Control Board. D.C. Code § 1-1501 et seq. *Palisades Citizens Asso. v. District of Columbia Alcoholic Beverage Control Board*, 324 A.2d 692, 1974 D.C. App. LEXIS 266 (1974).

Not only an Alcoholic Beverage Control Board finding of moral character and fitness, but any finding required by licensing statute, must be based only upon evidence in the public record of the proceeding, and participants in the proceeding must have an opportunity to address themselves to that evidence, otherwise fundamentals of due process are denied. D.C. Code §§ 1-1501, 1-1509(c), 25-115. *Citizens Asso. of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board*, 288 A.2d 666, 1972 D.C. App. LEXIS 358 (1972).

Motor vehicle operation and driver license revocation.

Under District of Columbia law, exclusive route for judicial review of motor vehicle operator's permit suspension was to District of Columbia Court of Appeals. D.C. Code 1981, §§ 1-1501 et seq., 1-1509, 1-1510(a), 40-302(a). *Johnson v. Cumis Ins. Soc.*, 624 F. Supp. 1170, 1986 U.S. Dist. LEXIS 30443 (1986).

In driver's license revocation proceeding, in absence of firm evidence that hearing examiner believed that licensee had burden of proof, court of appeals was unwilling to assume that proceedings were conducted under so fundamental misapprehension. D.C. Code 1981, § 1-1509(b). *Eilers v. District of Columbia Bureau of Motor Vehicles Services*, 583 A.2d 677, 1990 D.C. App. LEXIS 312 (1990).

To extent there is burden in automobile license suspension cases under Motor Vehicle Safety Responsibility Act, it rests on Department of Motor Vehicles; however, issue at such hearings is not determination of fact respecting fault, but rather, is determination whether

there is evidence, together with permissible inferences, which, if believed, could by reasonable possibility form predicate for liability of uninsured, and burden is not one of proof, but, one of ascertaining existence of evidence sufficient for test of reasonably possible liability. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1509, 40-417 et seq., 40-437. *Thomas v. District of Columbia Board of Appeals & Review*, 355 A.2d 789, 1976 D.C. App. LEXIS 523 (1976).

On appeal to director of Department of Motor Vehicles from decision of examiner revoking motorist's operator's permit, motorist was entitled to transcript of hearing before the examiner where motorist had made timely request to be provided with transcript and had offered to bear whole cost thereof. D.C. Code § 1-1509(c). *Quick v. Department of Motor Vehicles*, 331 A.2d 319, 1975 D.C. App. LEXIS 309 (1975).

In proceeding on order to show cause why motorist's operator's license should not be suspended, examiner's consultation of motorist's traffic record without notice to motorist was improper. D.C. Code § 1-1509(b). *Quick v. Department of Motor Vehicles*, 331 A.2d 319, 1975 D.C. App. LEXIS 309 (1975).

In driver's license revocation proceedings, motorist was entitled to opportunity to rebut any inaccuracy in his traffic record or to show that traffic record was not relevant or material or was otherwise admissible. D.C. Code § 1-1509(b). *Quick v. Department of Motor Vehicles*, 331 A.2d 319, 1975 D.C. App. LEXIS 309 (1975).

Police and firefighters retirement board.

Once a claimant seeking disability retirement benefits makes showing that claimant was disabled by on-duty injury, burden of proceeding shifts to government to adduce substantial evidence tending to disprove inference that disability resulted from on-duty injury, with substantial evidence being such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; ultimate burden of persuasion, however, remains with the claimant. *Beckman v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

Former Secret Service agent met initial burden of producing evidence that his psychological disability was incurred in performance of his duties, for purposes of recovering higher level of retirement benefits, in government-initiated involuntary retirement proceedings, and thus, burden shifted to government to present substantial evidence to rebut logical inference that agent's disabling condition resulted from an on-duty injury, where agent did not suffer from a pre-existing psychological illness, psychologist opined that the major depression disabling agent was a direct consequence of his performance of duties, and

agent's treating psychologist opined that agent's final breakdown was direct result of accumulated stress and depression from his employment. *Beckman v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

Finding that former Secret Service agent's psychological disability was not caused by performance of his duties, but rather by non-work-related circumstances, thereby denying agent higher level of retirement benefits, was not supported by substantial evidence; expert psychologist and agent's treating psychologist unanimously agreed that onset of agent's depressive symptoms occurred as a result of work-related incident, no medical evidence or opinion supported that disability was caused from agent's particular personality traits, rather than work-related stresses and conditions, and agent's psychological difficulties did not predate his employment with Secret Service. *Beckman v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

Reports of doctors who examined a claimant and have reached a diagnosis and expert opinion in their field of expertise, constitute substantial evidence for consideration by the Police and Firefighters' Retirement and Relief Board in determining whether claimant's injury or disabling condition was incurred in the performance of duty, for purposes of determining claimant's entitlement to disability retirement benefits. *Beckman v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

Mere fact that one officer may be more susceptible to disabling injury than another cannot be treated as dispositive without careful analysis of circumstances or events which caused asserted propensity to manifest itself in disabling condition, in determining officer's entitlement to retirement disability benefits for injuries incurred in performance of duty; analysis must still center on whether the circumstances which caused the vulnerability to ripen into disability were a part of or external to the officer's service activities. *Beckman v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

When there is credible expert evidence establishing that both internal and external circumstances medically contributed to the ultimately disabling condition of a police officer or firefighter, the Police and Firefighters' Retirement and Relief Board is obligated to consider all the relevant factors, determine their relationship to each other, and if possible, evaluate their relative causative significance, for purposes of determining entitlement to retirement disability benefits for injuries incurred in performance of duty. *Beckman v. D.C. Police & Firefighters'*

Ret. & Relief Bd., 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

Before reaching a conclusion of law, police retirement board must make a meaningful attempt to come to grips with difficult factual issues raised by parties. D.C. Code 1981, § 1-1501 et seq. *Britton v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, 681 A.2d 1152, 1996 D.C. App. LEXIS 166 (1996).

To reverse decision of Police and Firefighters' Retirement and Relief Board on ground that Board's findings of fact and conclusions of law are unsupported by substantial evidence in record, Court of Appeals must be persuaded that Board's decision in particular case was not supported by and in accordance with the reliable, probative, and substantial evidence. D.C. Code 1981, § 1-1509(e). *Allen v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, 528 A.2d 1225, 1987 D.C. App. LEXIS 389 (1987).

Where Police and Firemen's Retirement and Relief Board in concluding that employment of officer with police department had been terminated for disability which had not been incurred or aggravated in performance of duty did not state what facts were found to have been established by evidence but merely summarized or restated testimony and evidence without indicating which witness it credited or what facts it found to be established, findings were insufficient for review, and remand was required. D.C. Code 1973, §§ 4-526, 4-527; D.C. Code 1981, §§ 1-1509(e), 4-616(a). *Perry v. Police & Firemen's Retirement & Relief Bd.*, 451 A.2d 88, 1982 D.C. App. LEXIS 446 (1982).

Police and Firemen's Retirement and Relief Board committed reversible error by placing upon former police officer the burden of demonstrating with reasonable medical certainty that officer was not recovered from his disability, in that Board had burden of demonstrating with substantial evidence that former officer had recovered. D.C. Code §§ 1-1501, 1-1509(b), 1-1510, 4-533. *Kea v. Police & Firemen's Retirement & Relief Bd.*, 429 A.2d 174, 1981 D.C. App. LEXIS 245 (1981).

At disability hearing before Police and Firemen's Retirement and Relief Board at which Board needed to determine not only whether police officer was permanently disabled but also whether the disability was caused or aggravated in the line of duty, testimony bearing on relationship between officer's depressive mental state and his service-related injuries was essential to proper assessment of question of causation and, therefore, it was error for Retirement Board hearing officer to refuse to allow either testimony about the police officer's physical ailments or cross-examination of witnesses as to the officer's claimed physical injuries. D.C. Code §§ 1-1509(b), 1-1510(3)(D),

4-526, 4-527. *Kirven v. Police & Firemen's Retirement & Relief Board*, 379 A.2d 1186, 1977 D.C. App. LEXIS 282 (1977).

Fact that District of Columbia Police and Firemen's Retirement and Relief Board failed to make findings of fact with respect to claim of member of police department that she was disabled due to regulations requiring her to be available to do all forms of police work, was not fatal to board's decision denying disability retirement benefits, in view of fact that evidentiary showing concerning such police regulations was irrelevant in that police department was bound to follow congressional scheme set forth in Police and Firemen's Retirement and Disability Act which prevented department from assigning injured member of police department to positions more physically vigorous than her last class of position entailed. D.C. Code §§ 1-1509(e), 1-1510(3)(E), 4-521 to 4-535, 4-521(2), 4-526. *Jones v. Police & Firemen's Retirement & Relief Board*, 375 A.2d 1, 1977 D.C. App. LEXIS 446 (1977).

Under statute relating to disability retirement benefits for members of police department injured while off duty, Police and Firemen's Retirement and Relief Board is not required to determine whether member is physically fit to perform every conceivable kind of police assignment but merely whether member is still capable of handling duties required by kind of position to which member was regularly assigned prior to injury; member must establish that such physical impairment prevents performance of efficient service in the grade or class of position last occupied by him for entitlement to whatever annuity code prescribes. D.C. Code §§ 1-1509(b), 4-521 to 4-527, 4-521(2), 4-525a, 4-526. *Jones v. Police & Firemen's Retirement & Relief Board*, 375 A.2d 1, 1977 D.C. App. LEXIS 446 (1977).

Unanimous medical opinion, as reflected in medical reports of eight physicians who had been involved in medical history of policeman seeking determination that he was disabled for performance of duty, that policeman was not disabled supported Board of Appeals and Review determination that policeman was not disabled. D.C. Code §§ 1-1509, 4-525a, 4-527, 4-533, 4-535, 17-305; Organization Order No. 112, D.C. Code, Tit. 1, Appendix III. *Brooks v. District of Columbia Board of Appeals & Review*, 317 A.2d 864, 1974 D.C. App. LEXIS 403 (1974).

Board of Appeals and Review with regard to order of Police and Firemen's Retirement and Relief Board involuntarily separating member of police department from the department for disability not contracted in or aggravated by performance of duty had to make basic findings which were supported by substantial evidence in record before stating ultimate facts and conclusions and there had to be a demonstra-

tion in the findings of a rational connection between the facts found and the choice made. D.C. Code §§ 1-1501 et seq., 1-1509(e), 4-526, 4-527(1, 2). *Brewington v. District of Columbia Board of Appeals & Review*, 299 A.2d 145, 1973 D.C. App. LEXIS 210 (1973).

That assistant corporation counsel who sat as member of police retirement board when policeman's case was heard also acted as counsel on behalf of District at later hearing before Board of Appeals and Review was not error, in absence of showing of prejudice. *Organization Orders Nos. 12, 112, subds. B, par. 3a, C, par. 2e, f, par. 3 following § 1-1510*; D.C. Code §§ 1-1501 to 1-1510. *Carroll v. District of Columbia Board of Appeals & Review*, 292 A.2d 161, 1972 D.C. App. LEXIS 413 (1972).

Proceeding before the Board of Appeals and Review to review order of retirement board involuntarily separating petitioner from police department for disability not contracted or aggravated by performance of duty was "contested case," to which all of the procedures set forth in the pertinent section of the Administrative Procedure Act were applicable. D.C. Code §§ 1-1501 et seq., 1-1509, 4-526. *Brewington v. District of Columbia Board of Appeals & Review*, 287 A.2d 532, 1972 D.C. App. LEXIS 347 (1972).

On review of order of retirement board involuntarily separating petitioner from police department for disability not contracted or aggravated by performance of duty, failure of Board of Appeals and Review to either specifically adopt the findings and conclusions of the retirement board or to promulgate its own findings and conclusions, and merely stating that "the Board gave consideration" to the record and findings of the retirement board, constituted reversible error under the Administrative Procedure Act; basic findings would not be inferred from the action taken. D.C. Code § 1-1509(e). *Brewington v. District of Columbia Board of Appeals & Review*, 287 A.2d 532, 1972 D.C. App. LEXIS 347 (1972).

Preservation of issues.

Owner of adjacent apartment building and citizens group opposing modification to planned unit development (PUD), which proposed conversion of hotel to a cooperative apartment building, waived on appeal argument that zoning regulations required owner of adjacent apartment building to sign application for modification because restaurant, parking spaces and health club that served the hotel and which hotel controlled through a long term lease were located on apartment building owner's property, as opponents did not raise the argument before the District of Columbia Zoning Commission, an enormous amount of time had been expended in the administrative proceeding before the Commission, and issue of whether

apartment building owner was required to sign the application did not raise a jurisdictional issue. *Watergate E. Comm. Against Hotel Conversion to Co-Op Apts. v. D.C. Zoning Comm'n*, 953 A.2d 1036, 2008 D.C. App. LEXIS 333 (2008).

Presumptions and burden of proof, generally.

Under the District of Columbia Administrative Procedure Act, party asserting a particular fact has burden of affirmatively proving that fact. D.C. Code 1981, §§ 1-1501 et seq., 1-1509(b). *Columbia Realty Venture v. District of Columbia Rental Housing Com.*, 590 A.2d 1043, 1991 D.C. App. LEXIS 106 (1991).

Proponent of proposed telephone rate order has burden of proving that proposed rates are just and reasonable, and utility must show that expenditures relied upon as basis for rates are themselves reasonable. D.C. Code §§ 1-1501 et seq., 1-1503. *Atlantic Tel. Co. v. Public Service Com.*, 390 A.2d 439, 1978 D.C. App. LEXIS 489 (1978).

While in some circumstances, a petitioner seeking to establish that administrative agency failed to distribute to him funds properly his, might have burden of proof, where two of the three petitioning operators of vending stands at District of Columbia hospital were not notified of change in allocation of income until some four years after it occurred and subsequently their request for hearing was not honored for some two and one-half years, elementary fairness required that at the further hearing below the affirmative action taken by Department of Human Resources in reallocating vending machine income be regarded as the order under consideration, thus placing burden of proof upon Department to supply substantial evidence in support of its action. *Randolph-Shepard Vending Stand Act*, § 1, 20 U.S.C. § 107; D.C. Code § 1-1509(b). *Perry v. District of Columbia Dep't of Human Resources*, 326 A.2d 249, 1974 D.C. App. LEXIS 281 (1974).

Prisons and prisoners.

Where United States Attorney General's order curtailing furlough privileges previously available to certain inmates held in District of Columbia's corrections system merely placed eligibility restrictions on persons convicted of crime of violence, leaving eligibility criteria for all other prisoners as well as all other pertinent guidelines to be established by local officials, District of Columbia defendants retained significant rule-making responsibilities which could have substantial impact upon inmates, and District of Columbia was therefore improperly dismissed as party to inmates' suit questioning whether furloughs could be curtailed without compliance with District of Columbia Administrative Procedure Act. D.C. Code § 1-

1501 et seq.; Fed.Rules Civ.Proc. rule 12(b)(6), 18 U.S.C. Milhouse v. Levi, 548 F.2d 357, 1976 U.S. App. LEXIS 5884 (C.A.D.C. 1976).

Inmate's allegation of violation of prison regulations by Department of Corrections officials could be raised properly in Superior Court as petition for habeas corpus, even though Lorton Regulations Approval Act (LRAA) does not provide for judicial review of prison disciplinary decision under contested case jurisdiction. D.C. Code 1981, §§ 1-1509, 1-1510; D.C.Mun.Reg. title 28, § 500.01 et seq. Walton v. District of Columbia, 670 A.2d 1346, 1996 D.C. App. LEXIS 10 (1996).

Any error in Parole Board's not providing habeas petitioner with proposed order and opportunity to note objections in contested case was harmless; although petitioner alleged that he would have challenged certain statements in hearing examiner's report on hearsay grounds, he did not dispute that while on parole he was convicted of unauthorized use of automobile and petitioner admitted to hearing examiner that he had violated his parole in regard to his new conviction, his unemployment, his failure to make diligent efforts to find employment and his failure to carry out instructions from his parole officer and these statements to hearing examiner were tantamount to statement to Parole Board. D.C. Code 1981, §§ 1-1509(d), 24-206(a). Bennett v. Ridley, 633 A.2d 824, 1993 D.C. App. LEXIS 290 (1993).

Professional and occupational regulation and licensing.

Procedural due process rights of physician who was denied license by District of Columbia Board of Medicine were not violated; physician was afforded notice with reasons, full hearing with opportunity to confront witnesses and rebut evidence, further opportunity to submit findings, and opportunity for judicial review. U.S. Const.Amend. 14; D.C. Code 1981, §§ 1-1501 et seq., 1-1509, 2-3301.1 et seq., 2-3305.19(c). Greenlee v. Board of Medicine, 813 F. Supp. 48, 1993 U.S. Dist. LEXIS 1313 (1993).

Decision by Commission on Licensure to Practice the Healing Art to revoke doctor's license which was made on remand from Court of Appeals, in which only three of eight members of Commission who signed postremand decision actually read and reviewed record of earlier evidentiary hearing, and in which doctor was not given opportunity to file exceptions and present argument, violated statute requiring that doctor be given such opportunity whenever majority of Commission has not personally heard evidence, despite fact that three member panels of Commission are allowed by statute. D.C. Code 1981, §§ 1-1509(d), 2-1326(a)(9)(A, B). Sherman v. District of Columbia Com. on Licensure to Practice Healing

Art, 476 A.2d 667, 1984 D.C. App. LEXIS 390 (1984).

Head nurse's conflicting statements as to why she had originally signed "control sheet" indicating that she had witnessed nurse properly dispose of demerol but then changed her mind and scratched out her signature affected head nurse's credibility, and thus, Nurses' Examining Board's failure, in proceeding against nurse for unlawful possession of demerol, to permit cross-examination relating to head nurse's prior statements on subject constituted error; however, where substantial evidence independently supported Board's finding that nurse unlawfully possessed demerol, error was not prejudicial and remand was not required. D.C. Code 1981, §§ 1-1509(b), 1-1510; D.C. Code 1978 Supp. § 2-407. Arthur v. District of Columbia Nurses' Examining Bd., 459 A.2d 141, 1983 D.C. App. LEXIS 347 (1983).

Issuance or denial of a license to practice naturopathy pursuant to Healing Arts Practice Act constituted a "contested case" for purpose of Administrative Procedure Act for which direct review could be had in District of Columbia Court of Appeals. D.C. Code 1981, §§ 1-1502(8), 1-1509(a), 1-1510, 2-1301 et seq. District of Columbia v. Douglass, 452 A.2d 329, 1982 D.C. App. LEXIS 464 (1982).

Denial of petitioner's application for reinstatement as licensed registered nurse effectively precluded her from practicing her profession just as much as did initial revocation of her license; thus, due process clause of Fifth Amendment guaranteed petitioner right to hearing on her application for reinstatement and since application also fell within definition of "contested case," that hearing was required. D.C. Code 1978 Supp. §§ 1-1502(8), 1-1509, 47-2344; U.S. Const.Amend. 5. Woods v. District of Columbia Nurses' Examining Bd., 436 A.2d 369, 1981 D.C. App. LEXIS 380 (1981).

Where there was frank and repeated testimony by doctors that their practices were not in full compliance with guidelines for operation of out-patient abortion clinics which were drawn up by medical society and planned parenthood, there was insufficient foundation for a belief that the guidelines were "reliable, probative and substantial evidence" of community standards. D.C. Code § 1-1509(e). Sherman v. Commission on Licensure to Practice Healing Art, 407 A.2d 595, 1979 D.C. App. LEXIS 481 (1979).

Statement by chairman of Commission on Licensure to Practice the Healing Art in hearing concerning revocation of doctor's medical license that "[t]he Commission believes that it has sufficient evidence which, if not rebutted or explained, [would] testify the Commission's taking [the doctor's license.]" merely reflected that Commission had burden of proceeding and did not improperly place burden of persuasion

on doctor. D.C. Code §§ 1-1509(b). *Sherman v. Commission on Licensure to Practice Healing Art*, 407 A.2d 595, 1979 D.C. App. LEXIS 481 (1979).

Although decision of Board of Appeals and Review, sustaining proposal to revoke corporation's licenses to operate coin-operated motion picture machines in book stores, contained findings and conclusions, there was nothing to explain conclusion that conviction of corporation's former president of selling an obscene book at book shop operated by corporation required that corporation's license for the machines be revoked in interest of public decency; significantly, there was no finding of fact as to what interest, if any, former president held at time of the revocation proceedings, nor was there any finding with respect to character of pictures exhibited on the machines. D.C. Code §§ 1-1509(e), 22-2001, 47-2345. *Village Books, Inc. v. District of Columbia Board of Appeals & Review*, 296 A.2d 613, 1972 D.C. App. LEXIS 279 (1972).

Proposed order requirement.

Failure to comply with "proposed order" requirement of section of administrative procedure law setting forth procedure for contested cases where majority of those who are to render final order or decision did not personally hear the evidence requires reversal. D.C. Code §§ 1-1501 et seq., 1-1509(d). *Meier v. District of Columbia Rental Accommodations Com.*, 372 A.2d 566, 1977 D.C. App. LEXIS 460 (1977).

Where there was a quorum of the zoning commission at the public hearings, where decision to grant application for change in zoning was made unanimously by the entire five member commission, where the order itself, containing the findings of fact and conclusions of law, was later signed by three members, two of whom had been present at the hearings, and where opportunity was granted to objectors to file exceptions and present argument to majority of those who rendered the order, the provisions of the Administrative Procedure Act were sufficiently complied with. D.C. Code § 1-1501 et seq. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Public service vehicles and taxicabs.

Hackers' License Appeal Board improperly found that taxi driver misrepresented himself on applications; show cause notice contained nothing to indicate that driver was being charged with any irregularities in filling out application forms. D.C. Code 1981, § 1-1509(a). *Hedgman v. District of Columbia Hackers' License Appeal Bd.*, 549 A.2d 720, 1988 D.C. App. LEXIS 195 (1988).

Findings by Hackers' License Appeal Board, which failed to determine whether taxi driver

or minor passenger's father was aggressor in physical encounter and which failed to explain relevance of regulation about due regard for safety and convenience of passenger, did not rationally support conclusions of law that driver failed to display hacker's identification card and to operate taxi with due regard for safety of passenger; fight occurred on sidewalk near taxi; and Board merely paraphrased regulation. D.C. Code 1981, § 1-1509(e). *Hedgman v. District of Columbia Hackers' License Appeal Bd.*, 549 A.2d 720, 1988 D.C. App. LEXIS 195 (1988).

Hackers' License Appeal Board was required to resolve conflicting testimony whether taxi driver used improper language in presence of minor passenger and whether driver refused to show hacker's identification card to passenger's father; Board could not merely summarize testimony. D.C. Code 1981, § 1-1509(e). *Hedgman v. District of Columbia Hackers' License Appeal Bd.*, 549 A.2d 720, 1988 D.C. App. LEXIS 195 (1988).

Neither Hackers License Appeal Board nor reviewing court could consider a taxicab driver's alleged violation of a regulation which the cab driver was not charged with violating in determining whether he violated another regulation. D.C. Code 1981, § 1-1509(a); U.S. Const. Amend. 5. *Ahmed v. District of Columbia Hackers License Appeal Bd.*, 501 A.2d 415, 1985 D.C. App. LEXIS 551 (1985).

Department of Transportation's refusal to renew taxi driver's license pending his payment of \$300 fine was beyond scope of review of Court of Appeals, as denial was not sanction imposed by Hackers' License Appeal Board but was incidental result of sanction imposed. D.C. Code 1981, § 1-1509(c). *Humbles v. District of Columbia Hackers' License Appeal Bd.*, 484 A.2d 586, 1984 D.C. App. LEXIS 540 (1984).

Opportunity to inspect one's file and concomitant opportunity to secure information vital to a hacker's own investigation and defense are essential if hacker's suspension proceedings are to comport with due process. D.C. Code § 1-1501 et seq. *Babazadeh v. District of Columbia Hackers' License Appeal Board*, 390 A.2d 1004, 1978 D.C. App. LEXIS 554 (1978).

Opportunity to inspect one's file provides empty right if charged hacker is unaware of his right to access to his file and, therefore, consistent with requirement that governmentally conferred benefit be withdrawn only after due process of law, Hackers' License Appeal Board has obligation to notify charged party of his right to inspect his file after formal charges are filed but before date of suspension hearing. D.C. Code § 1-1501 et seq. *Babazadeh v. District of Columbia Hackers' License Appeal Board*, 390 A.2d 1004, 1978 D.C. App. LEXIS 554 (1978).

Especially where charged hacker is not represented by counsel in hacker's license suspension proceedings, Hackers' License Appeal Board must fashion procedures to insure that litigant is aware of full panoply of procedural rights which are his due. D.C. Code §§ 1-1509(a, b), 1-1510. *Babazadeh v. District of Columbia Hackers' License Appeal Board*, 390 A.2d 1004, 1978 D.C. App. LEXIS 554 (1978).

Where question of whether hotel doorman was involved in kickback scheme with cab drivers was correctly held by Hackers' License Appeal Board to be irrelevant to proceedings in which taxicab driver's license was suspended, fact that acting chairman of Board was officer of cab company whose drivers were allegedly involved in such kickback scheme did not show clear conflict of interest. D.C. Code § 1-1501 et seq. *Pillis v. District of Columbia Hackers' License Appeal Board*, 366 A.2d 1094, 1976 D.C. App. LEXIS 421 (1976), writ of certiorari denied by 430 U.S. 937, 97 S. Ct. 1566, 51 L. Ed. 2d 784, 1977 U.S. LEXIS 1243 (1977).

In proceeding resulting in suspension of taxicab driver's license, fact that driver was read complaint in his file instead of being allowed himself to review such file did not prejudice him. D.C. Code § 1-1501 et seq. *Pillis v. District of Columbia Hackers' License Appeal Board*, 366 A.2d 1094, 1976 D.C. App. LEXIS 421 (1976), writ of certiorari denied by 430 U.S. 937, 97 S. Ct. 1566, 51 L. Ed. 2d 784, 1977 U.S. LEXIS 1243 (1977).

In proceedings for suspension of taxicab driver's license, Hackers' License Appeal Board acted properly in refusing driver's proffer of evidence to impeach credibility of hotel doorman, since such evidence, to effect that doorman was engaged in "kickback" scheme with other taxi drivers, was not relevant to charges against driver of refusing to transport passenger and driving improperly. D.C. Code § 1-1501 et seq. *Pillis v. District of Columbia Hackers' License Appeal Board*, 366 A.2d 1094, 1976 D.C. App. LEXIS 421 (1976), writ of certiorari denied by 430 U.S. 937, 97 S. Ct. 1566, 51 L. Ed. 2d 784, 1977 U.S. LEXIS 1243 (1977).

Substantial evidence supported order of District of Columbia Hackers' License Appeal Board suspending taxicab driver's license for three months on findings that he refused to pick up fare, drove away from hotel while doorman had his hand on taxicab door handle, and was rude. D.C. Code §§ 1-1501 et seq., 1-1509(e). *Pillis v. District of Columbia Hackers' License Appeal Board*, 366 A.2d 1094, 1976 D.C. App. LEXIS 421 (1976), writ of certiorari denied by 430 U.S. 937, 97 S. Ct. 1566, 51 L. Ed. 2d 784, 1977 U.S. LEXIS 1243 (1977).

Hackers' License Appeal Board may not suspend or revoke hackers' license unless it concludes after hearing and upon appropriate findings as required by Administrative Procedure

Act that valid regulation promulgated by District of Columbia council under statute prescribing suspension or revocation has been violated, or unless it can show on record reliable, probative, and substantial evidence supporting its own conclusion that suspension or revocation of the particular license will be "in interest of public decency" or "necessary for protection of life, limbs, health, comfort and quiet of citizens." D.C. Code §§ 1-1501 to 1-1510, 1-1509, 1-1509(e), 47-2331(d), 47-2345(a). *Proctor v. Hackers' Board*, 268 A.2d 267, 1970 D.C. App. LEXIS 321 (App. 1970).

Public utilities.

— Electricity utilities, public utilities.

Erroneous failure of Public Service Commission (PSC) to give formal notice to Office of People's Counsel (OPC) in connection with electric utility's application to use new solid-state meters was harmless, where OPC did not challenge accuracy of the meters. Office of the People's Counsel v. PSC of D.C., 889 A.2d 1003, 2006 D.C. App. LEXIS 1 (2006).

Office of People's Counsel (OPC), as a statutory party to all proceedings, should have been given formal notice by the Public Service Commission (PSC) in connection with electric utility's application to use new solid-state meters. Office of the People's Counsel v. PSC of D.C., 889 A.2d 1003, 2006 D.C. App. LEXIS 1 (2006).

Public Service Commission (PSC) decision permitting electric utility to use new solid-state meters did not require notice and public comment; the approval complied with duly enacted rules and regulations establishing streamlined procedures. Office of the People's Counsel v. PSC of D.C., 889 A.2d 1003, 2006 D.C. App. LEXIS 1 (2006).

Party which was proponent of an order mandating conversion of recently completed power-generating plant from oil-burning to coal-burning facility was chargeable with knowledge that proponent of an order bears burden of persuasion in a contested administrative case. D.C. Code 1981, § 1-1509(b). People's Counsel of District of Columbia v. Public Service Com., 474 A.2d 835, 1984 D.C. App. LEXIS 376 (1984).

— Evidence, generally, public utilities.

Burden of persuasion falls on public utility as proponent of its cost recovery in utility rate case before Public Service Commission (PSC). D.C. Code 1981, § 1-1509. *Potomac Elec. Power Co. v. Public Serv. Comm'n.*, 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

District of Columbia Public Service Commission failed to establish utility rates on basis of reliable, probative and substantial evidence when, in ruling that shareholders of utilities alone should benefit from capital gains realized by utilities on sale of land no longer used in delivering service to public, Commission failed

to advance affirmative, particularized reasons justifying such treatment of capital gains; remand was therefore required for clarification of Commission's ruling. D.C. Code §§ 1-1501 et seq., 1-1509(b, e), 11-722, 43-301, 43-411, 43-704, 43-705, 43-706. *Washington Public Interest Organization v. Public Service Com.*, 393 A.2d 71, 1978 D.C. App. LEXIS 335 (1978), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3483 (1979).

— Gas utilities, public utilities.

In action by gas utility challenging Public Service Commission decision modifying formula for allocation of certain administrative and general expenses to rate payers within District of Columbia, evidence including testimony of Commission accountant that use of labor costs to allocate expenses forced District to bear a disproportionate burden of those expenses was sufficient that Commission's adoption of "modified Massachusetts formula," based on average of percentage share of labor costs, therm sales and plant in service, was not unreasonable, arbitrary or capricious and was in accordance with reliable, probative, and substantial evidence. D.C. Code 1981, §§ 1-1509(e), 43-906. *Washington Gas Light Co. v. Public Service Com.*, 483 A.2d 1164, 1984 D.C. App. LEXIS 528 (1984).

Public Service Commission improperly placed burden of proof on gas utility to justify continued usage of a formula for allocation of certain administrative and general costs which had been employed for several years; however, error was harmless where substantial evidence supported Commission decision altering the formula despite the presentation of vigorous testimony on behalf of utility in favor of retention. D.C. Code 1981, § 1-1509(b). *Washington Gas Light Co. v. Public Service Com.*, 483 A.2d 1164, 1984 D.C. App. LEXIS 528 (1984).

Although, on gas company's application for rate increase, Public Service Commission made no express findings to underpin revenue adjustment ultimately ordered to reflect anticipated growth in sales expected to be realized by company as result of relaxation of restrictions on company's extension of its service to new customers, estimate of amount of gross sales gas company would experience due to its reentry into market was implicit in Commission's determination of revenue requirement reduction and thus, inasmuch as record contained sufficient evidence to provide adequate basis for decision, decision in such regard would not be set aside. D.C. Code 1981, § 1-1509(e). *Washington Gas Light Co. v. Public Service Com.*, 452 A.2d 375, 1982 D.C. App. LEXIS 476 (1982), writ of certiorari denied by 462 U.S.

1107, 103 S. Ct. 2454, 77 L. Ed. 2d 1334, 1983 U.S. LEXIS 419, 51 U.S.L.W. 3871 (1983).

— Hearings, public utilities.

The Public Service Commission is not bound to hold a hearing on every question in a rate matter and is vested with the authority to impose a settlement which is substantially acceptable to most, if not all, of the parties. D.C. Code 1981, § 1-1509. *United States v. Public Service Com.*, 465 A.2d 829, 1983 D.C. App. LEXIS 461 (1983).

— In general.

The Public Service Commission has both the flexibility to consider settlement offers in rate case and the responsibility to reevaluate such offers on their merits in light of the evidence of record even if the proposed settlement fails to receive the unanimous support of the parties. D.C. Code 1981, § 1-1509. *United States v. Public Service Com.*, 465 A.2d 829, 1983 D.C. App. LEXIS 461 (1983).

— Judicial review, generally, public utilities.

Claims by owner of apartment building in petition that it filed with the Water and Sewer Authority (WASA), that it was not liable for tenants' unpaid water bills and that WASA could not file liens on the building for such bills, did not arise from a "contested case," and thus owner was not required by the Administrative Procedure Act (APA) to appeal adverse decision by WASA's hearing officer directly to the Court of Appeals, where owner was not challenging the particulars of water bills, and owner's petition before the WASA focused on questions of law and policy rather than adjudicative facts. *Euclid St., LLC v. D.C. Water & Sewer Auth.*, 41 A.3d 453, 2012 D.C. App. LEXIS 142 (2012).

Deference of Court of Appeals to decisions of Public Service Commission is not total; Public Service Commission has burden on appeal of its decisions to show fully and clearly why it has taken the particular rate-making action. D.C. Code 1981, § 1-1509(e). *Washington Gas Light Co. v. Public Service Com.*, 483 A.2d 1164, 1984 D.C. App. LEXIS 528 (1984).

Public Utilities Commission has burden of showing fully and clearly why it has taken particular rate-making action, and its findings of fact and conclusions of law must show that rate determination was in accordance with reliable, probative, and substantial evidence, but where it has accompanied its ruling with required full and careful explanation, that ruling is entitled to great deference. D.C. Code 1981, § 1-1509(d). *People's Counsel of District of Columbia v. Public Service Com.*, 472 A.2d 860, 1984 D.C. App. LEXIS 316 (1984).

Groups challenging rate increases granted to public utilities failed to make convincing showing required to overturn rate order based on ruling by Public Service Commission that shareholders alone should benefit from capital gains realized on land no longer used in delivering services to public. D.C. Code §§ 1-1509(e), 43-301. *Washington Public Interest Organization v. Public Service Com.*, 393 A.2d 71, 1978 D.C. App. LEXIS 335 (1978), writ of certiorari denied by 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182, 1979 U.S. LEXIS 3483 (1979).

— Telecommunications, public utilities.

Authority was vested in the Public Service Commission to act on a nonunanimous settlement in granting permission to telephone utility to increase by 40.3 million dollars its schedule of rates and tariffs for telephone service in area. D.C. Code 1981, § 1-1509. *United States v. Public Service Com.*, 465 A.2d 829, 1983 D.C. App. LEXIS 461 (1983).

The Public Service Commission did not ignore the statutory requirement of a "formal hearing" when it denied the United States the opportunity to cross-examine 33 witnesses who had submitted prefiled testimony in respect to telephone utility's application for a rate increase as long as the United States, as an intervenor, was permitted to have one witness testify as to whether approval of the joint settlement motion was in the public interest and was afforded the opportunity to submit prefiled and supplemental testimony and to conduct discovery. D.C. Code 1981, §§ 1-1509(b), 43-601(d), 43-608. *United States v. Public Service Com.*, 465 A.2d 829, 1983 D.C. App. LEXIS 461 (1983).

Decision of Public Service Commission to furnish transcripts to intervenors in telephone rate proceeding at expense of telephone company whether such transcripts were given or loaned, conflicted with section of Administrative Procedure Act providing that the cost incidental to preparation of copies of a record or portion thereof shall be borne equally by all parties requesting the copies. D.C. Code § 1-1509(c). *Chesapeake & Potomac Tel. Co. v. Public Service Com.*, 339 A.2d 710, 1975 D.C. App. LEXIS 397 (1975).

Decision of Public Service Commission in telephone rate proceeding to furnish transcripts to intervenors at telephone company's expense did not constitute a proper exercise of Commission's delegated powers to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it, since any procedure established by the Commission must conform with the minimum requirements set forth in Administrative Procedure Act, and since Commissions rule that transcripts be furnished to intervenors at telephone company's expense was a mere nul-

lity because it contravened express language of Administrative Procedure Act. D.C. Code §§ 1-1501, 1-1509(c), 43-402, 43-1003. *Chesapeake & Potomac Tel. Co. v. Public Service Com.*, 339 A.2d 710, 1975 D.C. App. LEXIS 397 (1975).

Where Public Service Commission failed in rate-making case to make adequate findings based on evidence in record respecting telephone company's claim of attrition, remand for further findings was required. D.C. Code §§ 1-1509(e), 43-706. *Telephone Users Asso. v. Public Service Com.*, 304 A.2d 293, 1973 D.C. App. LEXIS 263 (1973), writ of certiorari denied by 415 U.S. 933, 94 S. Ct. 1448, 39 L. Ed. 2d 492, 1974 U.S. LEXIS 1364 (1974).

In view of indications in record as to when information concerning telephone company's claim for certain expenses became available to Public Service Commission, Commission erred in refusing to consider company's data in support of its claim notwithstanding Commission's contention that, because company's claims were first made part of record as part of company's rebuttal case the Commission was unable either to review fully the company's forecast or present its own evidence of offsetting adjustments without unduly prolonging proceedings. D.C. Code § 1-1509(e). *Telephone Users Asso. v. Public Service Com.*, 304 A.2d 293, 1973 D.C. App. LEXIS 263 (1973), writ of certiorari denied by 415 U.S. 933, 94 S. Ct. 1448, 39 L. Ed. 2d 492, 1974 U.S. LEXIS 1364 (1974).

Where findings of Public Service Commission with respect to rate base and net revenues of telephone company directly influenced ultimate determination of rates that company could charge, the findings, though subsidiary, were subject to judicial review. D.C. Code §§ 1-1509(e), 43-706. *Telephone Users Asso. v. Public Service Com.*, 304 A.2d 293, 1973 D.C. App. LEXIS 263 (1973), writ of certiorari denied by 415 U.S. 933, 94 S. Ct. 1448, 39 L. Ed. 2d 492, 1974 U.S. LEXIS 1364 (1974).

Record, generally.

Ruling of Department of Consumer and Regulatory Affairs (DCRA) Office of Adjudication (OAD), denying renewal of public hall license, was not questionable or defective on its face, and thus, when Board of Appeals and Review dismissed public hall operator's administrative appeal, based on operator's failure to file brief, Board was justified in making the dismissal a dismissal with prejudice; crux of operator's appeal would have been that OAD based its ruling on a letter that was not properly entered into the record, but OAD's ruling was based on ample other evidence. *Felicity'S, Inc. v. D.C. Bd. of Appeals & Review*, 851 A.2d 497, 2004 D.C. App. LEXIS 317 (2004).

Minority Business Opportunity Commission's regulations requiring that revocation de-

cisions “shall be based upon a record of the hearing” simply reinforces the general requirement of the Administrative Procedure Act that no decision or order may be issued in a contested case “except upon consideration of [the] exclusive record” compiled during the administrative hearing. D.C. Code 1981, § 1-1509(c). *M.B.E., Inc. v. Minority Business Opportunity Com.*, 485 A.2d 152, 1984 D.C. App. LEXIS 558 (1984).

Record material must be made available to parties to contested case upon request. D.C. Code 1981, § 1-1509(c). *Rodriguez v. District of Columbia Dep’t of Employment Services*, 452 A.2d 1170, 1982 D.C. App. LEXIS 477 (1982), writ of certiorari denied by 460 U.S. 1018, 103 S. Ct. 1266, 75 L. Ed. 2d 490, 1983 U.S. LEXIS 4046, 51 U.S.L.W. 3649 (1983).

It was not permissible for hearing officer, who denied claim of vending stand operators to approximately \$12,000 in income derived from vending machines located on District of Columbia hospital grounds from October 1, 1964, through October 31, 1969, to rely upon assumption of correctness of 1964 administrative decision to reallocate the vending machine income equally among three operators, where record failed to establish even that determination was made in 1964 that all vending machines on hospital grounds were within reasonable proximity to and in direct competition with all of the vending stands. *Randolf-Sheppard Vending Stand Act*, § 1, 20 U.S.C. § 107; D.C. Code § 1-1509(e). *Perry v. District of Columbia Dep’t of Human Resources*, 326 A.2d 249, 1974 D.C. App. LEXIS 281 (1974).

Regulated industries.

In proceeding for approval of business combination of health insurance carriers, letter of clarification issued by Department of Insurance and Securities Regulation (DISR) at behest of the carriers, without notice and opportunity to be heard for parties objecting to proposed transaction, was supplemental order improperly precipitated by ex parte contacts to alter conditions attached to previous approval decision. D.C. Code 1981, § 1-1509(c). *Fair Care Found. v. District of Columbia Dep’t of Ins. & Sec. Regulation*, 716 A.2d 987, 1998 D.C. App. LEXIS 157 (1998).

Representation by counsel.

Injunction prohibiting nonlawyer from misrepresenting his qualifications to practice before District of Columbia agencies did not bar him from practicing before those agencies that permitted nonlawyer representation. In re *Banks*, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Regulations of the Rental Accommodations Office authorizing lay representation of party at agency proceedings are not ultra vires; therefore, attorney, who was not licensed in the District of Columbia, did not engage in unauthorized practice of law by appearing before the Office on behalf of clients. D.C. Code 1981, §§ 1-1501 et seq., 1-1503, 1-1509(b). *Brookens v. Committee on Unauthorized Practice of Law*, 538 A.2d 1120, 1988 D.C. App. LEXIS 48 (1988).

Res judicata and collateral estoppel.

Doctrine of administrative res judicata barred employment discrimination plaintiff’s claims under Title VII, District of Columbia Human Rights Act [D.C. Code 1981, § 1-2501 et seq.] and 42 U.S.C. § 1981; procedures provided by District of Columbia Commission on Human Rights were essentially equivalent to judicial proceeding, judgment was final, and parties and claims were identical to those brought before agency. *Civil Rights Act of 1964*, § 701 et seq., as amended, 42 U.S.C. § 2000e et seq.; D.C. Code 1981, §§ 1-1509(b), 1-2552 to 1-2554. *Parker v. National Corp. for Housing Partnerships*, 619 F. Supp. 1061, 1985 U.S. Dist. LEXIS 16573 (1985), reversed by 46 Fair Empl. Prac. Cas. (BNA) 1638 (D.C. Cir. June 2, 1987), dismissed by 697 F. Supp. 5, 1988 U.S. Dist. LEXIS 14380, 48 Fair Empl. Prac. Cas. (BNA) 890 (D.D.C. 1988).

For purposes of collateral estoppel, term “actually litigated” is not limited to just what is pled on paper but also what is presented, considered, and determined by the agency. *Borger Mgmt. v. Sindram*, 886 A.2d 52, 2005 D.C. App. LEXIS 536 (2005).

When res judicata or collateral estoppel principles apply to agency decision, court does not review determinations of law de novo; otherwise, those principles would have no effect. *Borger Mgmt. v. Sindram*, 886 A.2d 52, 2005 D.C. App. LEXIS 536 (2005).

Department of Consumer and Regulatory Affairs (DCRA) was acting in a judicial capacity with regard to tenant’s petition asserting that landlord’s termination of its Section 8 participation was unlawful retaliation for tenant’s complaint alleging housing code violations, and thus, absent a showing that DCRA was acting upon a material misconception of the law, DCRA’s ruling would be given preclusive effect, where Department held a full hearing on petition, evidence was presented and entered into the record, testimony was heard, and each party had the opportunity to make arguments. *Borger Mgmt. v. Sindram*, 886 A.2d 52, 2005 D.C. App. LEXIS 536 (2005).

There are exceptions, such as manifest error in the record of the administrative proceeding, to the policy of applying res judicata and collateral estoppel principles to agency rulings.

Borger Mgmt. v. Sindram, 886 A.2d 52, 2005 D.C. App. LEXIS 536 (2005).

Threshold question, in determining whether doctrines of collateral estoppel and res judicata apply to an agency decision, is whether the administrative proceeding was the essential equivalent of a judicial proceeding. Borger Mgmt. v. Sindram, 886 A.2d 52, 2005 D.C. App. LEXIS 536 (2005).

Doctrines of collateral estoppel and res judicata apply to the results of administrative proceedings when the agency is acting in a judicial capacity, resolving disputed issues of fact properly before it which the parties have an adequate opportunity to litigate. Borger Mgmt. v. Sindram, 886 A.2d 52, 2005 D.C. App. LEXIS 536 (2005).

Collateral estoppel applies not only to judicial adjudications, but also to determinations made by agencies other than courts, when such agencies are acting in a judicial capacity. Wilson v. Hart, 829 A.2d 511, 2003 D.C. App. LEXIS 485 (2003).

Res judicata applies in administrative cases when the agency is acting in a judicial capacity, resolving disputed issues of fact properly before it which the parties have an adequate opportunity to litigate; the threshold inquiry is whether the earlier proceeding is the essential equivalent of a judicial proceeding. Kovach v. District of Columbia, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Res judicata did not bar motorist's suit challenging decision of the District of Columbia to forgive outstanding traffic tickets but to refuse to refund those already paid, simply because motorist paid the traffic ticket; arguments in motorist's complaint were distinct from prior proceeding before Bureau of Traffic Adjudication (BTA), which determined motorist's liability for the traffic violation, and were not based on the Traffic Adjudication Act, and the challenged decision occurred five months after the BTA's adjudication of motorist's ticket and, thus, could not have been raised before the BTA at time it adjudicated the ticket. Kovach v. District of Columbia, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Collateral estoppel applies not only to judicial adjudications, but also to determinations made by agencies other than courts, when such agencies are acting in a judicial capacity. Kovach v. District of Columbia, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Res judicata may be overcome in the field of administrative law if there is manifest error in the record of the prior administrative proceeding. Walden v. District of Columbia Dep't of Empl. Servs., 759 A.2d 186, 2000 D.C. App. LEXIS 217 (2000).

Right to notice and opportunity to be heard.

Despite general language of District of Columbia Administrative Procedure Act relating

to procedures to follow in contested cases, fact that statute provides a right of hearing is not dispositive of question of whether proceeding is a contested case; question is whether required hearing is in essence adjudicatory or legislative in nature. D.C. Code §§ 1-1502(8), 5-711; 5 U.S.C. § 554. L'Enfant Plaza Properties, Inc. v. District of Columbia Redevelopment Land Agency, 564 F.2d 515, 1977 U.S. App. LEXIS 12078 (C.A.D.C. 1977).

Petitioner, whose liquor license renewal was denied by alcoholic beverage control board, was not denied due process, even though proposed decision was issued without all board members being present during evidentiary hearing and final decision was issued even though board members viewed different evidentiary findings, where, after panel, including two board members who were present at protest hearing, issued proposed decision and order listing findings of facts and conclusions of law, petitioner filed exception, was afforded hearing before issuance of final order, and final order was issued based on extensive findings of fact produced in proposed decision. Gallothom, Inc. v. D.C. Alcoholic Bev. Control Bd., 820 A.2d 530, 2003 D.C. App. LEXIS 142 (2003).

Due process required the District of Columbia Housing Authority (DCHA) to conduct a trial-type hearing concerning the permanent termination of recipient's eligibility for housing subsidies under the Tenant Assistance Program (TAP), based on allegation that recipient fraudulently under-reported her income in order to obtain more assistance; recipient's property interest in the TAP subsidies was a strong one demanding protection, determination of fraud involved evaluation of wide array of information and witness credibility, thereby requiring procedural protections to prevent error, and fiscal and administrative burden of trial-type adjudication was minimal. Powell v. D.C. Hous. Auth., 818 A.2d 188, 2003 D.C. App. LEXIS 132 (2003).

Procedure followed in connection with 1964 decision to reallocate vending stand operators' income from vending machines at District of Columbia hospital under vending stand program for the blind was defective in that no opportunity for a hearing was afforded and aggrieved operators were not even informed of the change. Randolph-Sheppard Vending Stand Act, § 1, 20 U.S.C. § 107; D.C. Code § 1-1509(e). Perry v. District of Columbia Dep't of Human Resources, 326 A.2d 249, 1974 D.C. App. LEXIS 281 (1974).

Operator of vending stand at District of Columbia hospital under vending stand program for the blind was entitled to notice of so important a matter as method by which his income was determined. Randolph-Sheppard Vending Stand Act, § 1, 20 U.S.C. § 107; D.C. Code § 1-1509(e). Perry v. District of Columbia Dep't

of Human Resources, 326 A.2d 249, 1974 D.C. App. LEXIS 281 (1974).

Rules and regulations.

Regulations cannot be construed to mean what an agency intended, but did not adequately express. *Chagnon v. D.C. Bd. of Zoning Adjustment*, 844 A.2d 345, 2004 D.C. App. LEXIS 66 (2004).

Even if an agency charged with implementing a regulation perceives it to be deficient or imperfect, it is not the agency's or the Court of Appeals' prerogative to rewrite the statute or regulation or to supply omissions in it in order to make it more fair. *Chagnon v. D.C. Bd. of Zoning Adjustment*, 844 A.2d 345, 2004 D.C. App. LEXIS 66 (2004).

The words of the statute must control, rather than the regulations, which must conform to the underlying statute. *Abadie v. D.C. Contract Appeals Bd.*, 843 A.2d 738, 2004 D.C. App. LEXIS 60 (2004).

It is axiomatic that an agency is bound by its regulations; an agency is not bound, however, by provisional statements. *Bio-Medical Applications of the Dist. of Columbia v. D.C. Bd. of Appeals & Review*, 829 A.2d 208, 2003 D.C. App. LEXIS 479 (2003).

Although regulations may be repealed or amended, and new rules and regulations may be adopted, such changes must be effected in conformity with prescribed statutory procedures, such as the District of Columbia Administrative Procedure Act (DCAPA). D.C. Code 1981, §§ 1-1501 et seq. *Teachey v. Carver*, 736 A.2d 998, 1999 D.C. App. LEXIS 196 (1999).

Rules of practice and procedure.

The general rule is that even jurisdictional questions must be put to agencies before they are brought to the reviewing court; the exception to waiver applies only where the challenge is to the agency's inherent capacity to act, or where the challenged action is plausibly claimed to be patently in excess of the agency's authority. *D.C. Hous. Auth. v. D.C. Office of Human Rights*, 881 A.2d 600, 2005 D.C. App. LEXIS 459 (2005).

Agency cannot avoid judicial mandate requiring it to comply with Administrative Procedure Act by adapting rules of practice in conflict with the Act, and thus, neither agency nor any of its hearing examiners should apply any rules where the impact of such application is to exclude evidence admissible or competent under Administrative Procedure Act section. D.C. Code 1981, § 1-1509. *Washington Times v. District of Columbia Dep't of Employment Services*, 530 A.2d 1186, 1987 D.C. App. LEXIS 441 (1987).

Schools.

Remand was required as to non-resident former wife's appeal of District of Columbia Public

Schools' (DCPS) decision requiring her to pay tuition for her daughter, for whom she shared joint custody with former husband, a District resident, where two hearing officers had made inconsistent findings of fact regarding wife's credibility, second hearing officer's findings were not supported by the record, and DCPS had not taken a position on the interpretation of relevant statutes and regulations. *Kirkpatrick v. D.C. Pub. Schs.*, 786 A.2d 586, 2001 D.C. App. LEXIS 253 (2001).

Review of the merits of an agency case, including the interpretation of applicable statutory and regulatory provisions, is best left to the Superintendent of the District of Columbia Public Schools (DCPS) in the first instance. *Kirkpatrick v. D.C. Pub. Schs.*, 786 A.2d 586, 2001 D.C. App. LEXIS 253 (2001).

There is no general bar to the use of hearsay evidence at hearing to determine whether parent is resident of District of Columbia for purposes of paying tuition for child's attendance at District of Columbia school. D.C. Code 1981, §§ 1-1509(b), 31-602; D.C. Mun. Regs. title 5, § 2009.12(b). *Braddock v. Smith*, 711 A.2d 835, 1998 D.C. App. LEXIS 100 (1998).

Hearing officer's findings of fact were deficient in proceeding to determine whether parent was liable for nonresident tuition for child enrolled in District of Columbia elementary school, precluding appellate review, where hearing officer did not indicate in his report whether he credited or discredited parent's testimony that she lived in the District. D.C. Code 1981, §§ 1-1509(e), 31-602. *Braddock v. Smith*, 711 A.2d 835, 1998 D.C. App. LEXIS 100 (1998).

Parent who was alleged to be nonresident of District of Columbia and thus liable for nonresident tuition for children enrolled in District schools had opportunity to make meaningful response to evidence against him, consisting of hearsay statements by neighbors to effect that he resided in Maryland, so that there was no violation of statute, regulation or due process, where hearing examiner advised parent of right to cross-examination and specifically of right to take issue with investigators' testimony about neighbors' statements, but parent failed to cross-examine the investigators and the only challenge to neighbors' statements was that it was impossible for Maryland neighbors to see him very day. U.S. Const. Amend. 5; D.C. Code 1981, § 1-1509(b); D.C. Mun. Regs. title 5, § 2009.11(c). *Robinson v. Smith*, 683 A.2d 481, 1996 D.C. App. LEXIS 212 (1996).

Court of Appeals did not have jurisdiction to review decision to transfer school employee from temporary position of "supervising director" with department of English to permanent position of "assistant director." D.C. Code §§ 1-1501 et seq., 1-1502(8), (8)(B), 1-1509, 1-1509(a, c, e), 1-1510. *Wells v. District of Columbia*

Board of Education, 386 A.2d 703, 1978 D.C. App. LEXIS 380 (1978).

Settlement and consent agreements.

Public Service Commission (PSC) is not bound to hold a hearing on every question when evaluating a proposed settlement. *District of Columbia v. PSC* of D.C., 802 A.2d 373, 2002 D.C. App. LEXIS 376 (2002).

Even when consent to proposed settlement is not unanimous, agency must consider proposal on its merits as possible basis for agency's order. D.C. Code 1981, §§ 1-1502(8), 1-1509(a). *Proctor v. District of Columbia Rental Housing Com.*, 484 A.2d 542, 1984 D.C. App. LEXIS 550 (1984).

Although language of statute which allows any contested administrative proceeding to be disposed of by agreed settlement—specifically authorizes only agreed settlements by all parties, rationale of that provision necessarily obliges agency at least to consider on merits a reasonable settlement proposed in good faith by fewer than all parties, unless statute governing agency's responsibility clearly indicates otherwise. D.C. Code 1981, § 1-1509(a). *Proctor v. District of Columbia Rental Housing Com.*, 484 A.2d 542, 1984 D.C. App. LEXIS 550 (1984).

Social services and public welfare.

Although letter informing foster parent of agency's intent to remove foster children from her home was undated, it was sufficient to establish that foster parent received more than ten days notice of intended removal; letter stated that a meeting had been scheduled to discuss the matter with her on a date that was more than ten days before the removal, and foster parent filed formal request for hearing more than ten days before the removal. D.C. Code 1981, § 16-2320(g). *Minnis v. District of Columbia Dep't of Human Servs.*, 712 A.2d 1030, 1998 D.C. App. LEXIS 118 (1998).

Sufficiency of notice.

Notice of nature and extent of hearing on final application for approval of planned unit development did not deprive party of due process of law in not specifying that final hearing would include presentation of additional evidence relating to issues that had already been aired at preliminary stage, and zoning commission was not precluded from reexamining at final hearing matters that had been dealt with at preliminary application. D.C. Code § 1-1501 et seq. *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 355 A.2d 550, 1976 D.C. App. LEXIS 489 (1976), writ of certiorari denied by 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334, 1976 U.S. LEXIS 3628 (1976).

Telephonic hearings.

Telephone hearings are a permissible means of resolving interstate unemployment compen-

sation claims and do not constitute a per se violation of due process. D.C. Code 1981, § 46-111(b); *U.S. Const. Amend. 14. Sterling v. District of Columbia Dep't of Employment Services*, 513 A.2d 253, 1986 D.C. App. LEXIS 397 (1986).

Manner in which appeals examiner conducted telephone hearing on interstate unemployment compensation claim of petitioner's former employee operated to significantly compromise petitioner's opportunity to be heard and, to that extent, was violative of due process inasmuch as appeals examiner failed to inform petitioner's receptionist of purpose of call, thus seriously and unnecessarily increasing likelihood that petitioner would not be alerted to fact that hearing was about to occur, and also cut off petitioner's receptionist in middle of a question and then abruptly terminated telephone call. D.C. Code 1981, § 46-111(b); *U.S.C. Const. Amend. 14. Sterling v. District of Columbia Dep't of Employment Services*, 513 A.2d 253, 1986 D.C. App. LEXIS 397 (1986).

Unemployment compensation.

— Administrative review, unemployment compensation.

Claimant who brought appeal from denial of unemployment benefits by Department of Employment Security had right to conduct cross-examination. D.C. Code 1981, § 1-1509(b). *Selk v. District of Columbia Dep't of Employment Services*, 497 A.2d 1056, 1985 D.C. App. LEXIS 478 (1985).

Letter could not properly be considered part of record on review of decision by Department of Employment Services, where employee did not submit letter to Office of Appeals and Review until after appeals examiner had issued his decision. D.C. Code 1981, § 1-1509(c). *Bowen v. District of Columbia Dep't of Employment Services*, 486 A.2d 694, 1985 D.C. App. LEXIS 304 (1985).

Office of Appeals and Review must base its decision solely on record that was made before appeals examiner; it is not empowered to receive additional evidence. D.C. Code 1981, § 1-1509(c). *Bowen v. District of Columbia Dep't of Employment Services*, 486 A.2d 694, 1985 D.C. App. LEXIS 304 (1985).

District Unemployment Compensation Board is authorized to provide by a procedural rule that appeals examiner's decision constitutes the proposed findings and decision of the Board and in so doing the Board should at the same time the appeals examiner's decision is issued provide a time limit in which to file with the Board objections to the appeals examiner's decision with a date for oral argument before the Board or any such objections set at that time or at a later date. D.C. Code § 1-1509(b). *Carey v.*

District Unemployment Compensation Board, 304 A.2d 18, 1973 D.C. App. LEXIS 265 (1973).

District Unemployment Compensation Board may adopt, by regulation or by notice to the parties, the order or decision of the appeals examiner, provided the findings of fact and conclusions of law are included therein as its proposed order, or it may serve a new proposed order or decision with new findings of fact and conclusions of law on the parties. D.C. Code §§ 1-1501 et seq., 1-1509(d). *Wallace v. District Unemployment Compensation Board*, 289 A.2d 885, 1972 D.C. App. LEXIS 368 (1972).

Once appeal has been filed with District of Columbia Unemployment Compensation Board, and other party has been given notice of appeal, and before Board can render its final decision, Board must serve on parties a proposed decision including findings of fact and conclusions of law, and each party must be given opportunity to file exceptions to proposed decision and to present argument to Board or to a majority of those who are to render final decision. D.C. Code § 1-1509(d). *Woodridge Nursery School v. Jessup*, 269 A.2d 199, 1970 D.C. App. LEXIS 340 (App. 1970).

Final decision of District of Columbia Unemployment Compensation Board, when rendered, must be in writing and must be accompanied by findings of fact and conclusions of law. D.C. Code § 1-1509(e). *Woodridge Nursery School v. Jessup*, 269 A.2d 199, 1970 D.C. App. LEXIS 340 (App. 1970).

— Admissibility of evidence, unemployment compensation.

Requirements of fair hearing include allowing interested parties, which include nonfinal base period employers, to develop evidence at unemployment compensation appeal hearing on circumstances of claimant's termination from final employer. D.C. Code 1981, §§ 1-1509(b), 46-111(a), 46-112(e). *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

— In general.

Not every act for which an employee may be dismissed from work will provide a basis for disqualification from unemployment compensation benefits because of misconduct; such disqualifying misconduct must meet a higher standard for it must be an act of wanton or wilful disregard of employer's interest, deliberate violation of employer's rules, disregard of standards of behavior which employer has right to expect of his employee, or negligence in such decree or recurrence as to manifest culpability, wrongful intent, or evil design, or show intentional and substantial disregard of employer's interest or of employee's duties and obligations to employer. D.C. Code § 1-1509(b). *Hawkins v.*

District Unemployment Compensation Board, 381 A.2d 619, 1977 D.C. App. LEXIS 307 (1977).

District of Columbia Unemployment Compensation Board, in complying with District of Columbia Administrative Procedure Act, should prescribe specifically what information petition for appeal in unemployment compensation case should contain, in order to prevent matters finding their way, by letter or otherwise, into record on appeal before Board when such matters were not before appeals examiner. D.C. Code §§ 1-1501 et seq., 1-1509(c). *Woodridge Nursery School v. Jessup*, 269 A.2d 199, 1970 D.C. App. LEXIS 340 (App. 1970).

— Judicial review, unemployment compensation.

Failure of record to contain findings necessary to support discharge for misconduct disqualifying correctional officer from receiving unemployment benefits necessitated remand of unemployment compensation proceeding; record did not establish that officer, who pled guilty to accepting bribe from inmate, was discharged as a result of that misconduct, appeals examiner failed to resolve dispute about date officer had been forced to resign, and appeals examiner did not make findings as to resignation date or as to issue of allegedly forged clearance record. D.C. Code 1981, § 46-111(b). *Mack v. District of Columbia Dep't of Empl. Servs.*, 651 A.2d 804, 1994 D.C. App. LEXIS 235 (1994).

Failure of hearing examiner to make findings regarding specific contested issues concerning unemployment compensation claimant's availability for work required remand for new or renewed hearing before examiner. D.C. Code 1981, §§ 1-1509(e), 46-110, 46-110(4). *Nursing Services, Inc. v. District of Columbia Dep't of Employment Services*, 512 A.2d 301, 1986 D.C. App. LEXIS 401 (1986).

Record supported finding of reasonable and adequate compliance with unemployment compensation claimant's request for record material necessary to prepare his appeal of appeals examiner's decision that he had received overpayment of unemployment compensation benefits. D.C. Code 1981, § 1-1509(c). *Rodriguez v. District of Columbia Dep't of Employment Services*, 452 A.2d 1170, 1982 D.C. App. LEXIS 477 (1982), writ of certiorari denied by 460 U.S. 1018, 103 S. Ct. 1266, 75 L. Ed. 2d 490, 1983 U.S. LEXIS 4046, 51 U.S.L.W. 3649 (1983).

Court of Appeals' review of Unemployment Compensation Board's decision in finding claimants ineligible for unemployment compensation benefits was limited to questions of law and determination of whether findings of compensation authorities were supported by competent evidence. D.C. Code §§ 1-1509(e), 46-311(f). *Adams v. District Unemployment*

Compensation Board, 414 A.2d 830, 1980 D.C. App. LEXIS 285 (1980).

In reviewing a decision of the district unemployment compensation board, the court may hold unlawful and set aside any action or findings and conclusions unsupported by reliable, probative and substantial evidence in the record. D.C. Code §§ 1-1509(e), 1-1510(3)(E). *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

Decision of the District Unemployment Compensation Board cannot be affirmed on judicial review unless the findings of fact and conclusions of law are supported by and in accordance with the reliable, probative and substantial evidence. D.C. Code § 1-1509(e). *General Railway Signal Co. v. District Unemployment Compensation Board*, 354 A.2d 529, 1976 D.C. App. LEXIS 499 (1976).

Failure of District Unemployment Compensation Board, which did not hear the evidence, to issue a proposed order or decision prior to issuance of final order, as was required by the District of Columbia Administrative Procedure Act, required vacation of Board's order and remand of the case for further proceedings. D.C. Code §§ 1-1501 et seq., 1-1509(d), 46-311(e). *Wallace v. District Unemployment Compensation Board*, 289 A.2d 885, 1972 D.C. App. LEXIS 368 (1972).

Where record consisted of numerous standard forms, some containing illegible cryptic notes and others bearing neither signature of unemployment benefits claimant nor an agency official, and a transcript of recorded testimony from which it appeared that crucial questions necessary to determination of "availability" were asked of claimant, and, although it was clear that she gave answers, in many instances, the answers were not transcribed, and the Unemployment Compensation Board failed to state specifically whether it adopted the appeals examiner's findings of fact, and to render a proposed decision before its final order, no meaningful judicial review of the Board's decision could be conducted, and case would be remanded to the Board with instructions to make appropriate findings of fact and conclusions of law. D.C. Code §§ 1-1509(d, e), 46-311(f). *Hill v. District of Columbia Unemployment Compensation Board*, 279 A.2d 501, 1971 D.C. App. LEXIS 180 (1971).

Two-sentence decision of District of Columbia Unemployment Compensation Board stating that decision of appeals examiner of certain date should be reversed because claimant believed that employer accepted offer to terminate her services on one date rather than on another date was inadequate as a finding of fact and a conclusion of law. D.C. Code §§ 1-1509(e), 46-311(f). *Woodridge Nursery School v.*

Jessup, 269 A.2d 199, 1970 D.C. App. LEXIS 340 (App. 1970).

— Notice and hearing, unemployment compensation.

Employer's representative was entitled to question unemployment compensation claimant, given statute making party to proceeding compellable to give evidence on behalf of any other party and fact that claimant had given some testimony, thus making him subject to cross-examination under the Administrative Procedure Act. D.C. Code 1981, §§ 1-1501 et seq., 14-301. *Washington Times v. District of Columbia Dep't of Employment Services*, 530 A.2d 1186, 1987 D.C. App. LEXIS 441 (1987).

At unemployment compensation appeal hearing, appeals examiner violated Unemployment Compensation Act by precluding nonfinal employer from cross-examining claimant and examining documentary evidence on circumstances of claimant's termination from her final employer. D.C. Code 1981, §§ 1-1509(b), 46-111(a), 46-112(e). *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

Fair hearing requires that confrontation rights of unemployment compensation claimants be protected, and claimants must be allowed to cross-examine persons who supply evidence presented against them. D.C. Code 1981, §§ 1-1509(b), 46-112(e). *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

Right of nonfinal employer to develop evidence on unemployment compensation claimant's final termination is limited primarily to questioning the claimant on circumstances of final termination, and presenting witnesses representing final employer to testify as to circumstances of this termination. D.C. Code 1981, §§ 1-1509(b), 46-111(a), 46-112(e). *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

In administrative proceedings before Department of Employment Services, appeals examiner did not abuse his discretion in denying former employee's requests for subpoenas seeking his personnel file and documents containing employer's personnel policies, where employee was not discharged because of his cumulative employment record, but on basis of single incident, and records containing employer's policy concerning granting sick leave was irrelevant, as employee did not leave work early because of illness. D.C. Code 1981, § 1-1509(b). *Jones v. District of Columbia Dep't of Employment Services*, 451 A.2d 295, 1982 D.C. App. LEXIS 434 (1982).

It is well established that an adversary hearing is required for District Unemployment

Compensation Board cases. D.C. Code §§ 1-1509, 1-1509(b). *Hawkins v. District Unemployment Compensation Board*, 381 A.2d 619, 1977 D.C. App. LEXIS 307 (1977).

Where unemployment compensation appeals examiner gave full consideration to employer's unsworn comment given by telephone, he deprived plaintiff of right to cross-examine on issues of company rules and misconduct. D.C. Code §§ 1-1509, 1-1509(b), 46-310(b). *Hawkins v. District Unemployment Compensation Board*, 381 A.2d 619, 1977 D.C. App. LEXIS 307 (1977).

Proposed findings and decision of District Unemployment Compensation Board denying unemployment compensation benefits on ground, inter alia, that claimant was not available for work due to her refusal to accept the aid of the United States Employment Service did not notify claimant that the Board was invoking its prerogative to take official notice of a nonrecord fact consisting of agency record, and thus claimant did not waive her right to contest that fact by failing to request an opportunity to rebut the evidence. D.C. Code §§ 1-1509(b), 46-309. *Carey v. District Unemployment Compensation Board*, 304 A.2d 18, 1973 D.C. App. LEXIS 265 (1973).

— Presumptions and burden of proof, unemployment compensation.

Although employer has burden of persuasion in discharge-for-cause unemployment compensation proceedings, employer may carry that burden by calling claimant as adverse witness where that technique appears to be feasible method of establishing relevant facts. D.C. Code 1981, §§ 1-1501 et seq., 14-301. *Washington Times v. District of Columbia Dep't of Employment Services*, 530 A.2d 1186, 1987 D.C. App. LEXIS 441 (1987).

In absence of final employer, it is responsibility of nonfinal employer at unemployment compensation appeal hearing, and not the claimant, to present evidence concerning circumstances of claimant's final termination, but claimant has responsibility to rebut assertions that final termination was voluntary. D.C. Code 1981, §§ 1-1509(b), 46-111(a), 46-112(e). *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

In unemployment cases the burden of proving a claimant's misconduct is on the employer. D.C. Code § 1-1509(b). *Hawkins v. District Unemployment Compensation Board*, 381 A.2d 619, 1977 D.C. App. LEXIS 307 (1977).

— Weight and sufficiency of evidence, unemployment compensation.

Appeals examiner's findings rejecting claim of unemployment compensation applicant that

he had been discharged prior to days on which he was found to have failed to report to work were supported by reliable, probative and substantial evidence and were binding on Court of Appeals. D.C. Code 1981, § 1-1509(e). *Butler v. District of Columbia Dep't of Employment Services*, 598 A.2d 733, 1991 D.C. App. LEXIS 290 (1991).

Absent factual determination as to claimant's allegation that her assignment with employer continued to require overtime hours, but that employer denied her overtime compensation, final decision of Department of Employment Services' Office of Appeals and Review that claimant left her employment voluntarily without good cause connected with the work, and was therefore not entitled to unemployment benefits, was not based upon substantial evidence, particularly where examiner did not inform claimant of her right to cross-examine during hearing, did not ask whether claimant wished to ask her employer's witness any questions, and did not give claimant opportunity to read missing documents into the record. D.C. Code 1981, §§ 1-1509(b), 1-1510(a)(3)(E), 46-111(a), 46-112(b). *Selk v. District of Columbia Dep't of Employment Services*, 497 A.2d 1056, 1985 D.C. App. LEXIS 478 (1985).

Fact that neither union nor paperhandlers made offer or demand during period they were unemployed due to pressmen's strike that employer provide work for paperhandlers and fact that paperhandlers failed to return to work until new contract was ratified, although work had become available for paperhandlers, supported Unemployment Compensation Board's conclusion that paperhandlers were ineligible for benefits because they were unemployed as result of labor dispute between their union and employer. D.C. Code §§ 1-1509(e), 46-310(f); National Labor Relations Act, § 2(9) as amended 29 U.S.C. § 152(9). *Adams v. District Unemployment Compensation Board*, 414 A.2d 830, 1980 D.C. App. LEXIS 285 (1980).

District Unemployment Compensation Board's decision, reversing appeals examiner's decision against claimant, was not supported by "reliable, probative, and substantial evidence," where the Board ruled out as hearsay the sworn testimony given by employer at hearing before the examiner, where the main thrust of the employer's testimony was, however, not based on hearsay but on company records which, if accepted as true, would upset the Board's premise that claimant was making a bona fide effort to obtain employment, and where the Board, without scheduling or hearing oral argument, deemed controlling a series of unsworn, self-serving statements made by claimant. D.C. Code § 1-1509(e). *General Railway Signal Co. v. District Unemployment Com-*

pensation Board, 354 A.2d 529, 1976 D.C. App. LEXIS 499 (1976).

Witness testimony.

— Cross examination and impeachment, witness testimony.

In the ordinary administrative case, hearsay is generally disfavored because in all adjudicative proceedings, cross-examination and confrontation are the handmaidens of trustworthiness in the face of factual dispute. *Compton v. D.C. Bd. of Psychology*, 858 A.2d 470, 2004 D.C. App. LEXIS 456 (2004).

In contested case, administrative agency, like a trial court, should permit cross examination to explore any matters which tend to contradict, modify, or explain testimony given on direct. D.C. Code 1981, § 1-1509(b). *Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n*, 743 A.2d 1231, 2000 D.C. App. LEXIS 9 (2000).

Agency has broad discretion in regulating nature, scope, and duration of cross-examination. D.C. Code 1981, § 1-1509(b). *Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n*, 743 A.2d 1231, 2000 D.C. App. LEXIS 9 (2000).

Cross-examination to impeach is not limited to matters brought out in direct examination. D.C. Code 1981, § 1-1509(b). *2101 Wisconsin Assoc. v. District of Columbia Dep't of Employment Services*, 586 A.2d 1221, 1991 D.C. App. LEXIS 43 (1991).

Testimony in administrative hearing that is not subject to cross-examination cannot be considered reliable, probative, or substantial evidence. D.C. Code 1981, § 1-1509(b). *Selk v. District of Columbia Dep't of Employment Services*, 497 A.2d 1056, 1985 D.C. App. LEXIS 478 (1985).

There is no requirement under District of Columbia Administrative Procedure Act that opponents of a rule be given opportunity to cross-examine witnesses testifying favorably or to rebut evidence presented by proponents. D.C. Code §§ 5-413 et seq., 5-415, 5-417. *Citizens Assn. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

Unless the persons who supply the answers to questionnaires are available for cross-examination by the adverse party, such documents do not meet the requirements of "reliable, probative, and substantial evidence" in an administrative proceeding where impeaching evidence has been introduced. D.C. Code § 1-1509(e). *General Railway Signal Co. v. District Unemployment Compensation Board*, 354 A.2d 529, 1976 D.C. App. LEXIS 499 (1976).

— Examination, witness testimony.

In contested case before administrative agency, matters beyond scope of direct exami-

nation are properly left to opposing party's case-in-chief. D.C. Code 1981, § 1-1509(b). *Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n*, 743 A.2d 1231, 2000 D.C. App. LEXIS 9 (2000).

— Expert witnesses, witness testimony.

Agencies are not required to accept expert testimony over lay testimony, but some indication of reasons for rejecting expert, as opposed to lay, testimony is required. D.C. Code 1973, § 1-1509(e). *Bakers Local Union v. District of Columbia Bd. of Zoning Adjustment*, 437 A.2d 176, 1981 D.C. App. LEXIS 393 (1981).

An agency is not legally required to explain why it favored one witness or one statistic over another; however, opinions of qualified experts are not to be lightly disregarded and some indication in findings as to reason for rejecting expert testimony in favor of that of lay witnesses is required if judicial review is to be meaningful. D.C. Code § 1-1509(e). *Washington Ethical Soc. v. District of Columbia Board of Zoning Adjustment*, 421 A.2d 14, 1980 D.C. App. LEXIS 374 (1980).

— In General.

Agency generally is free to credit, without explanation, nonexpert testimony of witness, even in face of directly conflicting evidence by opposing witness, so long as there is sufficient supporting evidence in record for that position. D.C. Code 1973, § 1-1509(e). *Bakers Local Union v. District of Columbia Bd. of Zoning Adjustment*, 437 A.2d 176, 1981 D.C. App. LEXIS 393 (1981).

Workers compensation proceedings.

When the hearing examiner fails to make factual findings on a material contested issue in a workers' compensation case, appellate court is not permitted to make its own finding on the issue; it must remand for the proper factual finding. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

Even when they might have reached a different result upon an independent review of the record in a workers' compensation case, both the Director of Department of Employment Services and appellate court are bound by the hearing examiner's factual findings. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

Factual findings of the hearing examiner in a workers' compensation case are entitled to great deference on appeal if supported by substantial evidence. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

Because administrative law judge's (ALJ) credibility determination in favor of doctor, who conducted independent medical evaluation of workers' compensation claimant, was sup-

ported by substantial evidence, the Director of Department of Employment Services exceeded his permissible scope of review by disregarding it to come to his own conclusion drawn from an independent review of the record. *Marriott Int'l v. D.C. Dep't of Empl. Servs.*, 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

In workers' compensation case, Director of Department of Employment Services is not at liberty to substitute his judgments for that of hearing examiner based on Director's favored competing body of substantial evidence. *Marriott Int'l v. D.C. Dep't of Empl. Servs.*, 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

Director of Department of Employment Services may reverse a hearing examiner's workers' compensation order only when it is unsupported by substantial evidence or is otherwise legally incorrect. *Marriott Int'l v. D.C. Dep't of Empl. Servs.*, 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

If substantial evidence exists to support the hearing examiner's findings in workers' compensation case, the existence of substantial evidence to the contrary does not permit the Director of the Department of Employment Services to substitute his judgment for that of the examiner. *Marriott Int'l v. D.C. Dep't of Empl. Servs.*, 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

In workers' compensation cases, Director of the Department of Employment Services is bound by the hearing examiner's findings of fact even though the Director may have reached a contrary result based on an independent review of the record. *Marriott Int'l v. D.C. Dep't of Empl. Servs.*, 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

Task of Department of Employment Services in a workers' compensation action is to weigh the evidence presented at the hearing to determine if a causal relationship existed between claimant's job requirements and his injury in order to determine compensability. *Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs.*, 827 A.2d 35, 2003 D.C. App. LEXIS 422 (2003).

Substantial evidence did not support Department of Employment Services (DOES) appeal examiner's finding of fact that claimant's disabling medical condition, hypertension and stress, arose more than three years before date of injury, so as to support his conclusion that evidence overcame presumption that claimant's injuries arose from his employment; although finding was based primarily on form by claimant's personal physician dated prior to date of injury, there was evidence that form was most likely misdated, and examiner relied on form without addressing its patent weaknesses. *Fontenot v. D.C. Dep't of Empl. Servs.*, 804 A.2d 1104, 2002 D.C. App. LEXIS 484 (2002).

The Director of Department of Employment Services (DOES) conducts a limited review of decisions of a hearing examiner to determine whether the examiner's findings are supported by substantial evidence in the record. *Landesberg v. D.C. Dep't of Empl. Servs.*, 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Every decision and order of the Department of Employment Services (DOES) adverse to party to workers' compensation case shall be accompanied by findings of fact and conclusions of law supported by and in accordance with the reliable, probative, and substantive evidence, and when these basic requirements are met, Court of Appeals' review is very limited; however, that review presupposes that DOES has made findings on the pivotal facts at issue. D.C. Code 1981, § 1-1509(e). *Velasquez v. District of Columbia Dep't of Empl. Servs.*, 723 A.2d 401, 1999 D.C. App. LEXIS 18 (1999).

Court of Appeals reviews decision of Director of Department of Employment Services in a workers' compensation case, considering whether decision is supported by substantial evidence, and making sure that Director has accorded proper deference to hearing examiner's fact-finding role; however, Director's legal conclusions are reviewed de novo, keeping in mind that when statutory language is not entirely clear, Court ordinarily defers to Director's interpretation of governing statute and agency's own regulations. D.C. Code 1981, §§ 1-1509(e), 1-1510(a)(3)(E). *KOH Sys. v. District of Columbia Dep't of Empl. Servs.*, 683 A.2d 446, 1996 D.C. App. LEXIS 202 (1996).

Department of Employment Services' (DOES) recordation of date of filing of workers' compensation claim in its official records was the kind of fact most capable of accurate and ready determination by resort to sources whose accuracy could not reasonably be questioned and, accordingly, agency should have taken official notice of that record in determining whether workers' compensation claim was timely filed. D.C. Code 1981, § 1-1509(b). *Renard v. District of Columbia Dep't of Employment Servs.*, 673 A.2d 1274, 1996 D.C. App. LEXIS 60 (1996).

Zoning and planning.

— Contested cases, generally, zoning and planning.

Agencies in passing on amendment to project area redevelopment plan under the District of Columbia Redevelopment Act were not required to follow the contested case procedure of the District of Columbia Administrative Procedure Act with respect to owners and lessees of property in affected renewal project area, contrary to their claim that they were entitled to a public hearing, since administrative decisions dealing with land use control questions in-

volved general matters of public policy. D.C. Code §§ 1-1502(8), 5-711; 5 U.S.C. § 554. *L'Enfant Plaza Properties, Inc. v. District of Columbia Redevelopment Land Agency*, 564 F.2d 515, 1977 U.S. App. LEXIS 12078 (C.A.D.C. 1977).

Statutory right to a hearing before modification of project area redevelopment plan does not automatically confer "contested case" status on administrative proceeding for purposes of subjecting proceeding to "contested case" procedural safeguards of District of Columbia Administrative Procedures Act; critical issue is whether hearing is adjudicative or legislative in nature. D.C. Code §§ 1-1502(8), 1-1509, 5-711. *Hoerber v. District of Columbia Redevelopment Land Agency*, 412 F. Supp. 211, 1976 U.S. Dist. LEXIS 15308 (1976), reversed by 564 F.2d 515, 184 U.S. App. D.C. 30, 1977 U.S. App. LEXIS 12078 (1977).

Proceeding by the District of Columbia city council to determine whether modifications of project area redevelopment plan should be permitted was quasi legislative and not a "contested case" and thus not subject to "contested case" procedural safeguards of the District of Columbia Administrative Procedures Act. D.C. Code §§ 1-1502(8), 1-1509, 5-711. *Hoerber v. District of Columbia Redevelopment Land Agency*, 412 F. Supp. 211, 1976 U.S. Dist. LEXIS 15308 (1976), reversed by 564 F.2d 515, 184 U.S. App. D.C. 30, 1977 U.S. App. LEXIS 12078 (1977).

The responsibility of the board of zoning adjustment (BZA) in connection with dispute between university and neighbors is to determine whether a reasonable accommodation has been made between the university and the neighbors which does not interfere with the legitimate interests of the latter or the legally protected interests of the former. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

A temperate, rational, and balanced approach is called for to resolve zoning disputes between university and neighbors. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Where the Zoning Commission sits in a legislative capacity, making a policy decision directed toward the general public, its proceeding is without the contested case provision of the Administrative Procedure Act, as regards judicial review. D.C. Code §§ 1-1501 to 1-1510. *Citizens Asso. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

A proceeding before the Zoning Commission on amendments relating to an area of a city

lacks the specificity of subject matter and result, indicative of an adjudicatory proceeding; the proceeding is a quasi-legislative hearing conducted for the purpose of obtaining facts and information, and views of the public pertinent to the resolution of a policy decision, and thus, is not a contested case within the judicial review provisions of the Administrative Procedure Act. D.C. Code §§ 1-1501 to 1-1510. *Citizens Asso. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

Proceeding involving application for approval of planned unit development was a "contested case" within the meaning of the Administrative Procedure Act and procedures provided therein relating to standards for hearing must be complied with. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1509. *Capitol Hill Restoration Soc. v. Zoning Com.*, 287 A.2d 101, 1972 D.C. App. LEXIS 339 (1972).

— Due process of law, zoning and planning.

Failure to hold evidentiary hearing before Department of Consumer and Regulatory Affairs (DCRA), regarding revocation of certificate of occupancy to use leased premises as automobile service center, did not violate commercial tenant's due process rights; DCRA's notice of intent to revoke advised tenant to request evidentiary hearing within 15 days of receiving the notice and that failure to timely request hearing would result in final notice of revocation, tenant requested hearing 24 days after receiving the notice, and tenant's allegation that landlord had been out of the country was not good cause for failing to make timely request for evidentiary hearing. *Kuri Bros. v. District of Columbia Bd. of Zoning Adjustment*, 891 A.2d 241, 2006 D.C. App. LEXIS 24 (2006).

Allowing office of planning to present testimony on behalf of proposed rezoning project and later to summarize positions of parties before Zoning Commission was not violative of due process or of Administrative Procedure Act. D.C. Code 1981, § 1-1509(b); U.S.C. Const.Amend. 14. *Citizens' Coalition against Proposed Brookings Office Bldg. v. District of Columbia Zoning Com.*, 516 A.2d 506, 1986 D.C. App. LEXIS 458 (1986).

Restraints of District of Columbia Administrative Procedure Act and full range of due process protections necessary to an adversary adjudication were not applicable to rulemaking proceedings before the Zoning Commission. D.C. Code §§ 1-1501 et seq., 5-413 et seq. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

Failure of intervenor in zoning commission proceeding concerning application for approval of planned unit development to serve another

intervenor with copy of its proposed findings and conclusions did not deny the other intervenor rights under zoning rules or due process. *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 355 A.2d 550, 1976 D.C. App. LEXIS 489 (1976), writ of certiorari denied by 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334, 1976 U.S. LEXIS 3628 (1976).

— Findings of fact and conclusions of law, zoning and planning.

Zoning commission's finding that grant of variance from 100-foot waterfront setback requirement for boathouse did not impair the integrity of the zone plan was supported by substantial evidence, where the commission specifically determined that the boathouse would not cause substantial detriment to the public good, but rather that the boathouse would create additional recreational opportunities and provide public access along the riverfront. *Wash. Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

Zoning commission's finding that boathouse property was unique so as to require a variance from the 100-foot setback zoning requirement was supported by substantial evidence, where the combination of the property's shallowness, boundary on the river shoreline, and proximity to trail made it impossible to build any structure without a relaxation of the setback requirement, and further revision of the design of the boathouse to conform to the waterfront setback would have impeded the storage of boats near the area of their primary use. *Wash. Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

Zoning commission's finding that construction of boathouse would have a minimal negative impact to adjoining properties was supported by substantial evidence, where boathouse would result in the relocation of a trail by a few feet, and it would have some impact on views of the water from the trail, but the boathouse would animate a portion of the trail, provide more users, and provide a point of interest at the trailhead, and the commission outlined the steps that would be taken to address environmental and traffic concerns. *Wash. Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

Board of Zoning Adjustment (BZA) complied with statutory requirement that an agency make findings of fact supporting its ultimate conclusions of law, where Board made findings with regard to every issue that was contested and that Board was obliged to resolve under zoning regulations. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 816 A.2d 41, 2003 D.C. App. LEXIS 27 (2003).

Generally, conclusory or incomplete findings are insufficient to support decision of Board of Zoning Adjustment; subsidiary findings of basic fact on all material issues must support and result in discernible manner. D.C. Code 1981, § 1-1509(e). *Levy v. District of Columbia Bd. of Zoning Adjustment*, 570 A.2d 739, 1990 D.C. App. LEXIS 36 (1990).

Board of zoning adjustment is required to supplement its decision in a contested case with factual findings, which must consist of concise statement of conclusions upon each contested issue of fact, and full reasons must be given for each decision; neither repetition of statutory language nor simple summary of evidence satisfies these requirements. D.C. Code § 1-1509(e). *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 1978 D.C. App. LEXIS 577 (1978).

Board of zoning adjustments was required to support its findings with more than mere scintilla of rationally connected evidentiary support. D.C. Code § 1-1509(e). *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 1978 D.C. App. LEXIS 577 (1978).

Section of District of Columbia zoning regulations concerning findings to be made by Board of Zoning Adjustment is to be read in context of other provisions and regulations, defining scope of Board's review, and does not demand findings as to each requirement of regulation but only findings "related to" matters listed in such section; it is limitation on scope of review and not grant of authority. Act June 20, 1938, 52 Stat. 797; D.C. Code § 1-1509(b). *Dupont Circle Citizens Asso. v. District of Columbia Board of Zoning Adjustment*, 364 A.2d 610, 1976 D.C. App. LEXIS 372 (1976).

Administrative determinations by Board of Zoning Adjustment must be based on findings of fact which articulate with reasonable certainty the reasons for the disposition of each contested issue of fact. D.C. Code § 1-1509. *Shay v. District of Columbia Board of Zoning Adjustment*, 334 A.2d 175, 1975 D.C. App. LEXIS 346 (1975).

Board of Zoning Adjustment's findings of fact which were devoid of any delineation of factors weighed in reaching its conclusions of law thereby precluding determination on review as to which factors or considerations influenced Board's decision were inadequate and required remand to Board for proper entry of findings of fact and conclusions of law. D.C. Code §§ 1-1509, 1-1510. *Shay v. District of Columbia Board of Zoning Adjustment*, 334 A.2d 175, 1975 D.C. App. LEXIS 346 (1975).

— In general.

The timely filing of an appeal with the Board of Zoning Adjustment (BZA) is mandatory and jurisdictional. *Georgetown Residents Alliance*

v. D.C. Bd. of Zoning Adjustment, 816 A.2d 41, 2003 D.C. App. LEXIS 27 (2003).

Because the rules of the Board of Zoning Adjustment (BZA) contain no specific time limit on appeals to the BZA, a standard of reasonableness is applied in determining whether an appeal is timely. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 816 A.2d 41, 2003 D.C. App. LEXIS 27 (2003).

Under the reasonableness standard for determining the timeliness of an appeal to the Board of Zoning Adjustment (BZA), the time for filing an appeal commences when the party appealing is chargeable with notice or knowledge of the decision complained of. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 816 A.2d 41, 2003 D.C. App. LEXIS 27 (2003).

The Board of Zoning Adjustment's (BZA) conclusion with regard to the timeliness of an appeal to the BZA is entitled to special deference because the agency is interpreting its own internal rules of procedure. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 816 A.2d 41, 2003 D.C. App. LEXIS 27 (2003).

Neighborhood group's appeal, to Board of Zoning Adjustment (BZA), of Department of Consumer and Regulatory Affairs' (DCRA) issuance of building permits to university, for installation of play equipment, shed, and fence on vacant lots adjacent to proposed child development center, was untimely; neighborhood group knew the permits had been issued but it did not file its appeal until seven months after permits were issued in final form. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 816 A.2d 41, 2003 D.C. App. LEXIS 27 (2003).

The timely filing of an appeal with the Board of Zoning Adjustment is mandatory and jurisdictional. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

A "timely appeal" to the Board of Zoning Adjustment is an appeal within a reasonable time. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

At least in the absence of exceptional circumstances that substantially impair the ability of an aggrieved party to appeal and are outside the party's control, two months between notice of a decision and appeal therefrom are the limit of timeliness for an appeal to the Board of Zoning Adjustment. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

The defenses of estoppel and laches are judicially disfavored in the zoning context because of the public interest in enforcement of the zoning laws. *Sisson v. D.C. Bd. of Zoning Ad-*

justment, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

Laches is rarely applied in the zoning context except in the clearest and most compelling circumstances. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

Zoning commission was required to make findings with respect to equitable issues of estoppel and laches as well as property owner's claim regarding deficiencies in procedures of advisory neighborhood commission in opposing property owner's application to modify architectural plans of previously approved planned unit development in order for Court of Appeals to review zoning commission's decision denying application, where issues of estoppel, laches and procedural defects were raised before zoning commission by parties and on commission's own initiative. D.C. Code 1981, § 1-1509(e). *Rafferty v. District of Columbia Zoning Comm'n*, 583 A.2d 169, 1990 D.C. App. LEXIS 287 (1990).

Hearing of District of Columbia Board of Zoning Adjustment was not in conformity with contested case requirements of statute where Board failed to swear witnesses or permit cross-examination. D.C. Code § 1-1509. *Dietrich v. District of Columbia Board of Zoning Adjustment*, 293 A.2d 470, 1972 D.C. App. LEXIS 222 (1972).

District of Columbia Administrative Procedure Act is applicable to proceedings before the Zoning Commission. D.C. Code §§ 1-1501 et seq., 1-1509, 11-722. *Capitol Hill Restoration Soc. v. Zoning Com.*, 287 A.2d 101, 1972 D.C. App. LEXIS 339 (1972).

— Judicial review, zoning and planning.

The Court of Appeals defers to the Board of Zoning Adjustment's (BZA) interpretation of the zoning regulations and must uphold that interpretation unless it is plainly erroneous or inconsistent with the regulations. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 816 A.2d 41, 2003 D.C. App. LEXIS 27 (2003).

Applicants for special exceptions to open mental health offices in condominium complex were not prejudiced by any error in the Board of Zoning Adjustment's failure to issue a proposed order prior to their denial of the applications, where applicants filed a motion to reconsider and had ample opportunity to convince the Board that its initial order was erroneous. D.C. Code 1981, §§ 1-1509(d), 1-1510(b). *Gage v. District of Columbia Bd. of Zoning Adjustment*, 738 A.2d 1219, 1999 D.C. App. LEXIS 238 (1999).

For purposes of review of validity of zoning agency's findings, court considered whether findings were made on each contested issue of fact, whether decision followed rationally from

facts, and whether there was sufficient evidence to support each finding. D.C. Code 1981, § 1-1509(e). *Citizens Coalition v. District of Columbia Bd. of Zoning Adjustment*, 619 A.2d 940, 1993 D.C. App. LEXIS 19 (1993).

Decisions made by Board of Zoning Adjustment must be upheld on appeal if they rationally flow from findings of fact supported by substantial evidence in record as a whole. D.C. Code 1981, §§ 1-1509(e), 1-1510(a)(3)(E). *Draude v. District of Columbia Bd. of Zoning Adjustment*, 582 A.2d 949, 1990 D.C. App. LEXIS 281 (1990).

Court of appeals is willing to infer specific findings from general findings of zoning board when they are sufficiently detailed so as to provide court with basic and underlying reasons for conclusions entered by board in making its decision. D.C. Code 1981, § 1-1509(e). *Daro Realty, Inc. v. District of Columbia Zoning Com.*, 581 A.2d 295, 1990 D.C. App. LEXIS 251 (1990).

Scope of review of Board of Zoning Adjustment's determination that there has been material change of circumstances is limited to whether there has been abuse of discretion. D.C. Code 1981, § 1-1509(e). *Towles v. District of Columbia Bd. of Zoning Adjustment*, 578 A.2d 1128, 1990 D.C. App. LEXIS 177 (1990).

On review of Board of Zoning Adjustment decision, Court of Appeals must determine: whether agency has made finding of fact on each material contested issue of fact; whether substantial evidence of record supports each finding; and whether conclusions legally sufficient to support decision flow rationally from findings. D.C. Code 1981, § 1-1509(e). *Levy v. District of Columbia Bd. of Zoning Adjustment*, 570 A.2d 739, 1990 D.C. App. LEXIS 36 (1990).

Court of Appeals must uphold Board of Zoning Adjustment's interpretation of university's campus plan regulations unless that interpretation is plainly erroneous or inconsistent with regulations. D.C. Code 1981, § 1-1509(e). *Levy v. District of Columbia Bd. of Zoning Adjustment*, 570 A.2d 739, 1990 D.C. App. LEXIS 36 (1990).

When Board of Zoning Adjustment's decision turns on its interpretation of regulation that agency is charged with implementing, then interpretation must be upheld unless it is plainly erroneous or inconsistent with regulation. D.C. Code 1981, § 1-1509(e). *Levy v. District of Columbia Bd. of Zoning Adjustment*, 570 A.2d 739, 1990 D.C. App. LEXIS 36 (1990).

In reviewing board of zoning adjustment's findings, Court of Appeals applies the substantial-evidence test which requires: there must be findings of each contested issue of facts, decision must rationally follow from the facts, and there must be sufficient evidence supporting each finding. D.C. Code 1981, § 1-1509(e). *Woodley Park Community Asso. v. District of*

Columbia Bd. of Zoning Adjustment, 490 A.2d 628, 1985 D.C. App. LEXIS 365 (1985).

The Court of Appeals is bound to review board of zoning adjustment's findings on the basis of facts found by the board unless they are not supported by and in accordance with the reliable, probative and substantial evidence. D.C. Code 1981, § 1-1509(e). *Brown v. District of Columbia Bd. of Zoning Adjustment*, 486 A.2d 37, 1984 D.C. App. LEXIS 572 (1984).

Because hotel owner did not initially invoke the appellate jurisdiction of the Board of Appeals and Review over revocation by the Department of Licenses, Investigations, and Inspections of a permit for a neon sign atop his hotel, Court of Appeals had to dismiss, for lack of jurisdiction, that part of hotel owner's petition for review challenging the Department's revocation of the permit; in declining to appeal the Department's revocation to the Board, hotel owner failed to create a "contested case" as to that issue. D.C. Code 1981, §§ 1-1502(8), 1-1509, 1-1510. *Auger v. D.C. Bd. of Appeals & Review*, 477 A.2d 196, 1984 D.C. App. LEXIS 370 (1984).

Board of Zoning Adjustment's decision is reviewed on substantial evidence test, which imposes three requirements on Board: Board must make written findings of basic facts on all material contested issues; each basic finding must be supported by evidence sufficient to convince reasonable minds of its adequacy; and these findings taken together must rationally lead to conclusions of law which are legally sufficient to support Board's decision. D.C. Code 1973, § 1-1509(e). *C & P Bldg. Ltd. Partnership v. District of Columbia Bd. of Zoning Adjustment*, 442 A.2d 129, 1982 D.C. App. LEXIS 289 (1982).

On review from order of Board of Zoning Adjustment concluding that a property owner has not abandoned his right to nonconforming use, court must determine whether the agency has made a finding of fact on each material contested issue of fact or whether substantial evidence of record supports each finding, and whether the conclusions of law follow rationally from the findings. D.C. Code §§ 1-1509(e), 1-1510(3)(A, E). *George Washington University v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1342, 1981 D.C. App. LEXIS 254 (1981).

In reviewing denial of special exception for increased enrollment at private school the court could not find facts from the record either to fill gaps or to revise a decision based on erroneous findings and proper disposition was a remand, with Board of Zoning Adjustment entitled to conduct further hearings or even reach a different result. D.C. Code § 1-1509(e). *Washington Ethical Soc. v. District of Columbia Board of Zoning Adjustment*, 421 A.2d 14, 1980 D.C. App. LEXIS 374 (1980).

Review by Court of Appeals of decision of Board of Zoning Adjustment decision is limited to assuring the Board's conclusions flow rationally from findings of fact, which are in turn supported by substantial evidence. D.C. Code § 1-1509(e). *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 1980 D.C. App. LEXIS 323 (1980).

Task of Court of Appeals is to determine whether conclusions of Board of Zoning Adjustment are adequate to support the decision, whether there are factual findings upon which those conclusions rest, and whether such findings are supported by the record. D.C. Code § 1-1509(e). *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 1980 D.C. App. LEXIS 323 (1980).

With exception of failing to make finding on material issue of parking facilities, the decision of zoning commission to grant application to amend zoning map so as to change zoning of two lots from classification allowing construction of single-family detached dwellings to classification permitting single-family rowhouse dwellings was supported by substantial evidence. D.C. Code § 1-1509(e). *Lee v. District of Columbia Zoning Com.*, 411 A.2d 635, 1980 D.C. App. LEXIS 234 (1980).

Inasmuch as zoning commission failed to make a finding on a material contested issue of parking facilities, its decision granting application to amend zoning map classification allowing construction of single-family detached dwelling to classification permitting single-family rowhouse dwelling would be remanded. D.C. Code § 1-1509(e). *Lee v. District of Columbia Zoning Com.*, 411 A.2d 635, 1980 D.C. App. LEXIS 234 (1980).

A decision of Board of Zoning Adjustment must be affirmed when it follows as a matter of law from facts stated and those facts have substantial support in evidence. D.C. Code §§ 1-1509(e), 5-420(3). *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231, 1979 D.C. App. LEXIS 381 (1979).

Scope of inquiry on judicial review of a decision of Board of Zoning Adjustment is limited to whether findings made are supported by and in accordance with reliable, probative, and substantial evidence in whole administrative record and whether conclusions of Board flow rationally from those findings. D.C. Code §§ 1-1509(e), 5-420(3). *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231, 1979 D.C. App. LEXIS 381 (1979).

Where three expert witnesses testified that they estimated marginal level traffic in connection with rezoning of residential area for expansion of supermarket and the only expert who had estimated impact of supermarket would be complete breakdown of capacity of area to handle traffic as result of rezoning was severely challenged on his credentials as expert, zoning

commission's findings with respect to traffic impact were not unsupported by substantial evidence. D.C. Code § 1-1509(e). *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231, 1979 D.C. App. LEXIS 381 (1979).

In reviewing order of board of zoning adjustment denying college's application for amendment to its campus plan to allow college to offer short-term, continuing education type courses on a year-around basis on its campus located in residential zone, court must determine whether detailed findings of board were made upon each material contested issue of fact, whether those findings were supported by and in accordance with reliable, probative and substantial evidence in the whole of the administrative record and whether conclusions of board flowed rationally from those findings. D.C. Code § 1-1509(e); U.S. Const. Amends. 1, 5. *Marjorie Webster Junior College, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 309 A.2d 314, 1973 D.C. App. LEXIS 329 (1973).

In action by college for review of order of board of zoning adjustment denying application for amendment to campus plan to allow college to offer short-term, continuing education type courses on year-around basis, evidence sustained findings of board that new programs would introduce large number of transient men and women onto college property, substantially increase number of people entering or leaving neighborhood, usually in automobiles, adversely affect use of neighboring property in residential zone and cause continuing instability and alarm in community because of uncertainty about nature of uses which could be anticipated. D.C. Code §§ 1-1501 et seq., 1-1509(e), 5-413 et seq. *Marjorie Webster Junior College, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 309 A.2d 314, 1973 D.C. App. LEXIS 329 (1973).

Where issues on which Board of Zoning Adjustment failed to make express findings of fact, in ruling on application for exception to permit use of property for a private boys' high school, an application which aroused substantial neighborhood opposition, were within conditions to be considered under zoning regulations before exception could be granted, the issues were "material," and order granting exception would be vacated and case remanded for further proceedings. D.C. Code §§ 1-1509, 5-414. *Dietrich v. District of Columbia Board of Zoning Adjustment*, 293 A.2d 470, 1972 D.C. App. LEXIS 222 (1972).

Court had jurisdiction to review order of District of Columbia Zoning Commission granting preliminary approval to planned unit development where Commission violated petitioners' rights under the Administrative Procedure Act by failing to hold a hearing in compliance therewith, despite claim that the order was not

the final step in administrative process and there had been no exhaustion of administrative remedies. D.C. Code §§ 1-1501 et seq., 1-1509. *Capitol Hill Restoration Soc. v. Zoning Com.*, 287 A.2d 101, 1972 D.C. App. LEXIS 339 (1972).

— **Modification or amendment of regulations, zoning and planning.**

Zoning Commission's conclusion that property owner could not attain reasonable level of residential development as of right under lot's current zoning in view of landmark status of building presently on property was supported by record. D.C. Code 1981, § 1-1509(e). *Daro Realty, Inc. v. District of Columbia Zoning Com.*, 581 A.2d 295, 1990 D.C. App. LEXIS 251 (1990).

Zoning Commission's finding in earlier order based upon property owner's request to rezone parcel from medium density general residence to commercial use, that incremental increase in traffic would not be unreasonable, was sufficient from which to infer that incremental increase in traffic as result of rezoning same parcel from medium density general residence to medium high density general residence would be reasonable. D.C. Code 1981, § 1-1509(e). *Daro Realty, Inc. v. District of Columbia Zoning Com.*, 581 A.2d 295, 1990 D.C. App. LEXIS 251 (1990).

Fact that building proposed by property owner, including setbacks and side yards, was less restrictive of light and air than what property owner had right to erect was sufficient to infer that proposed building would not block light and air of adjacent residences and diminish their market value. D.C. Code 1981, § 1-1509(e). *Daro Realty, Inc. v. District of Columbia Zoning Com.*, 581 A.2d 295, 1990 D.C. App. LEXIS 251 (1990).

Inferences from Zoning Commission's general findings were sufficient to support Zoning Commission's decision to permit upzoning on parcel despite decision 15 years earlier to downzone area in order to obtain stability. D.C. Code 1981, § 1-1509(e). *Daro Realty, Inc. v. District of Columbia Zoning Com.*, 581 A.2d 295, 1990 D.C. App. LEXIS 251 (1990).

Legal advice received by Zoning Commission from corporation counsel was not evidence, and thus, Zoning Commission was not required to hold hearing to permit challenges to be made to advice of corporation counsel that rezoning site would not make use of site by chancery more likely and thus deprive historical landmark existing on property of its protection under federal and local preservation laws, prior to granting requests for rezoning. D.C. Code 1981, § 1-1509(b). *Daro Realty, Inc. v. District of Columbia Zoning Com.*, 581 A.2d 295, 1990 D.C. App. LEXIS 251 (1990).

Objector was not denied a fair hearing before Zoning Commission with respect to applicant's proposed rezoning for property, notwithstanding claim that objector was denied an opportunity to cross-examine owner's rebuttal witnesses, where objector never requested an opportunity to proffer what facts it hoped to elicit through cross-examination and never established how it was prejudiced. D.C. Code 1981, § 1-1509(b). *Citizens' Coalition against Proposed Brookings Office Bldg. v. District of Columbia Zoning Com.*, 516 A.2d 506, 1986 D.C. App. LEXIS 458 (1986).

Application of supermarket for zoning amendment to permit commercial expansion could not be prejudiced by anticipated additional traffic burden expected to be generated by other anticipated but unapproved development; to some extent impact of other anticipated development was legally irrelevant to consideration of supermarket's application for rezoning. D.C. Code § 1-1509(e). *Citizens Asso. of Georgetown, Inc. v. District of Columbia Zoning Com.*, 402 A.2d 36, 1979 D.C. App. LEXIS 364 (1979).

Permitting assistant director of District of Columbia's office of planning and management to present, at executive session of Zoning Commission, a written summary and abstract of evidence presented at public hearing in connection with rezoning application did not violate opponent's right to hearing, etc., notwithstanding that the assistant director testified in favor of application at the public hearing, since he was merely acting in accordance with his position as a staff member of the Commission; however, appearance of propriety would have been enhanced had another staff member appeared at the executive session. D.C. Code §§ 1-1509(b, c), 5-417. *Capitol Hill Restoration Soc. v. Zoning Com.*, 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

Absence of one member of Zoning Commission from session at which rezoning order was signed did not trigger application of statute requiring that a majority of those who are to render the final order personally hear the evidence where no evidence was introduced at such meeting and purpose thereof was merely to review the findings of fact and conclusions of law and sign order which had previously been approved by voice vote. D.C. Code § 1-1509(d). *Capitol Hill Restoration Soc. v. Zoning Com.*, 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

Although formally issued findings of fact and conclusions of law of Zoning Commission were not made available to the parties until date, i. e., January 2, after which two of the three Commissioners who approved rezoning order ceased being members by operation of law, the order was not invalid for want of proper issuance where decision and related order were

previously signed and order was previously published in two newspapers, notwithstanding that publications did not include findings of facts and conclusions of law; even if order did not become "final" before January 2, it took effect and was "issued" when it was published on December 28. D.C. Code § 1-1509(e). *Capitol Hill Restoration Soc. v. Zoning Com.*, 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

— Nonconforming uses, zoning and planning.

There had been no denial of notice of issues involved based on certain statute, where concept of termination of nonconforming use by changing it to conforming use was part and parcel of theory of nonconforming uses and landowner should have been on notice that by applying for extension of nonconforming use zoning adjustment board was required to assess applicability of zoning regulation providing that when existing nonconforming use has been changed to conforming use, it shall not be changed back to nonconforming use; moreover, record disclosed that it was not until facts were developed at hearing that board determined relevance of such regulation, and landowner was then given opportunity to proffer its interpretation thereof. D.C. Code § 1-1509(a). *Lange v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1058, 1979 D.C. App. LEXIS 514 (1979).

— Permits, certificates and approvals, zoning and planning.

Zoning commission did not unduly limit objector's cross-examination of representative of national zoo, in case in which objector opposed proposed planned unit development adding new wing to apartment building that was listed as historic landmark and that was located on unique site in ward three abutting national zoo; position that zoo took in opposition to prior unrelated projects was only marginally relevant at best to evaluation of its position of neutrality on proposed development in case, and it was not unreasonable for commission to conclude that questioning about such matters was beyond proper scope of cross examination and more properly undertaken in objector's case-in-chief as part of effort to prove adverse consequences of development. D.C. Code 1981, § 1-1509(b). *Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n*, 743 A.2d 1231, 2000 D.C. App. LEXIS 9 (2000).

University's campus development plan described proposed buildings with sufficient specificity to permit Board of Zoning Adjustment to evaluate overall effect of proposed development on surrounding neighborhood; although plan failed to identify specific locations, heights and bulks for 15 new buildings, plan did identify gross square footage of additional space allo-

cated to each of five land use categories, number of buildings proposed within each category, potential square footage ranges of each building, and preferred alternative sites for proposed structures within each use category. D.C. Code 1981, § 1-1509(e). *Levy v. District of Columbia Bd. of Zoning Adjustment*, 570 A.2d 739, 1990 D.C. App. LEXIS 36 (1990).

Statute providing that each agency shall, before the formulation of any final policy decision with respect to permits affecting said commission area, provide to each affected commission 30 days' notice of the proposed action must be construed as requiring 30 days' notice of the body of proceedings arising from each permit application, not each stage of the proceedings. D.C. Code 1981, §§ 1-261(b), (c)(1), 1-1509(a). *Committee for Washington's Riverfront Parks v. Thompson*, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

Notice of the October 5, 1981 hearing on the proposed waterfront development was timely when the affected advisory neighborhood commission had already been properly informed, but even if 30 days' notice of the hearing was required, where the affected advisory neighborhood commission presented its views at the hearing and was represented by counsel, no prejudice to the affected advisory neighborhood commission occurred by reason of the allegedly deficient notice. D.C. Code 1981, §§ 1-261(b), (c)(1), 1-1509(a). *Committee for Washington's Riverfront Parks v. Thompson*, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

Construction which the mayor's agent gave to the rules of procedure promulgated pursuant to the Historic Protection Act and which was to effect that the regulation required 30 days' notice of the entire body of proceedings arising from each permit application and, hence, was inapplicable to a hearing which merely constituted a stage in proceedings, was not clearly erroneous. D.C. Code 1981, §§ 1-261(b), (c)(1), 1-1509(a). *Committee for Washington's Riverfront Parks v. Thompson*, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

Notice of the October 5, 1981 site visit and hearing by the mayor's agent in connection with the proposed waterfront development was not inadequate as untimely or as insufficiently identifying the issues that would be addressed. D.C. Code 1981, §§ 1-261(b), (c)(1), 1-1509(a). *Committee for Washington's Riverfront Parks v. Thompson*, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

Actual notice of the proposed development to the affected advisory neighborhood commission which allows meaningful participation in a proceeding is sufficient to cure merely technical violations of the statutory 30-day notice requirement. D.C. Code 1981, §§ 1-261(b), (c)(1), 1-1509(a). *Committee for Washington's River-*

front Parks v. Thompson, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

Zoning commission which isolated and ruled on traffic impact, proposed parking, pollution impact, proposed commercial use, loss and addition of proposed residential development, projected economic benefit, and light and ventilation to the neighboring apartment building adequately complied with the substantial evidence requirement of the District of Columbia Administrative Procedure Act in granting its approval to the planned unit development. D.C. Code § 1-1509(e). Dupont Circle Citizens Asso. v. District of Columbia Zoning Com., 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

Where applicants submitted plans to Board of Zoning Adjustment which were based upon Zoning Commission's order and were virtually identical to those approved by Commission, and applicants purposely attempted to avoid changes in order to accelerate decision-making process, Board properly limited scope of its hearing to those matters provided in zoning regulations, and properly prevented petitioning citizens' association from reopening issues decided by the Zoning Commission. Act June 20, 1938, 52 Stat. 797; D.C. Code § 1-1509(b). Dupont Circle Citizens Asso. v. District of Columbia Board of Zoning Adjustment, 364 A.2d 610, 1976 D.C. App. LEXIS 372 (1976).

— Street closings, zoning and planning.

Where multiple citizens groups, at least some of which apparently included nearby property owners and users of street, vigorously opposed closing of street, hearing was required under Street Readjustment Act, closing of particular street and reversion of title thereto to abutting property owners determined legal rights, duties, or privileges of specific parties and factual questions before Council on its consideration of whether to close the street were adjudicative rather than legislative in nature, proceeding should have been treated as a "contested case" under District of Columbia Administrative Procedure Act. D.C. Code §§ 1-1501 to 1-1510, 7-123, 7-124, 7-401, 7-405, 11-722. Chevy Chase Citizens Asso. v. District of Columbia Council, 307 A.2d 740, 1973 D.C. App. LEXIS 413 (1973), vacated by 309 A.2d 97 (D.C. 1973).

Proponents of street closing are entitled to develop on record the identity and property interests of any groups or individuals opposing the proposed closing so as not only to enable Council to make fully informed judgment as to merits of a controversy but also to assist Court of Appeals in making future judgments as to whether a petitioner for review under statute is a person suffering a legal wrong or adversely affected or aggrieved by an order or decision of Commissioner or Council or agency in a contested case. D.C. Code §§ 1-1507, 1-1509(b, d), 1-1510, 7-404; D.C. Code Court of Appeals

Rules, rule 15(b). Chevy Chase Citizens Asso. v. District of Columbia Council, 307 A.2d 740, 1973 D.C. App. LEXIS 413 (1973), vacated by 309 A.2d 97 (D.C. 1973).

A hearing officer readily might be designated to conduct proceeding in contested case on street closing so long as Council follows requirements of District of Columbia Administrative Procedure Act, including affording opportunity for argument to be submitted as required by statute. D.C. Code §§ 1-1507, 1-1509(b, d), 1-1510, 7-404; D.C. Code Court of Appeals Rules, rule 15(b). Chevy Chase Citizens Asso. v. District of Columbia Council, 307 A.2d 740, 1973 D.C. App. LEXIS 413 (1973), vacated by 309 A.2d 97 (D.C. 1973).

— Variances or exceptions, zoning and planning.

Extraordinary or exceptional conditions of the boathouse property caused practical difficulties for zoning variance applicants, and thus, applicants were entitled to a variance from the 100-foot waterfront setback requirement, where the boathouse plan was completed before the new waterfront zoning classification was proposed, the setback was not required under the zoning classification originally requested by applicants, and a re-design of the boathouse to conform with the setback would have negatively affected its internal functionality, appearance, and stylistic consistency with neighboring structures. Wash. Canoe Club v. District of Columbia Zoning Comm'n, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

In considering whether to grant or deny a variance, various factors are relevant, which include: (1) the weight of the burden of strict compliance; (2) the severity of the variance requested; and (3) the effect the proposed variance would have on the overall zone plan. Wash. Canoe Club v. District of Columbia Zoning Comm'n, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

The uniqueness of a property as required for the issuance of a zoning variance can arise from a variety of factors; the critical point is that the extraordinary or exceptional condition must affect a single property. Wash. Canoe Club v. District of Columbia Zoning Comm'n, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

In order to obtain variance relief, an applicant must show that: (1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. Wash. Canoe Club v. District of Columbia Zoning Comm'n, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

When evaluating whether an applicant is entitled to a special exception in a zoning district, the zoning commission is required to determine whether a reasonable accommodation has been made between the applicant and the surrounding properties; however, the applicant is not charged with considering every option that any party in opposition might conceptualize, and the commission is not required to give greater weight to one party's views as opposed to another. *Wash. Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

Board of Zoning Adjustment (BZA) acted arbitrarily and capriciously, in violation of Administrative Procedure Act, by refusing to allow intervention by citizens at hearing to determine whether variance was needed to build recycling center on property zoned "commercial and light manufacturing"; chairwoman first suggested that persons living within 200 feet of property could intervene, but then withdrew suggestion after several citizens announced themselves, and citizens were never given opportunity to express their views. *D.C. Code 1981, §§ 1-1501 to 1-1510. Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1993 D.C. App. LEXIS 318 (1993).

Substantial evidence supported Board of Zoning Adjustment's findings in support of its decision to grant special exceptions and variance to building operator to use buildings which had been classified as community residence facilities to house persons in custody of Department of Corrections with six months or less remaining on confinement. *D.C. Code 1981, § 1-1509(e). Williams v. District of Columbia Bd. of Zoning Adjustment*, 535 A.2d 910, 1988 D.C. App. LEXIS 5 (1988).

Zoning board did not have to provide its reasons for adopting one or another position on the "basic" or "underlying" facts which were themselves disputed by the parties in connection with granting of special exception, but the board had to reach sufficiently detailed findings on basic factual issues to demonstrate that it had considered and ruled on each of the party's contentions. *D.C. Code 1981, § 1-1509(e). Draude v. District of Columbia Bd. of Zoning Adjustment*, 527 A.2d 1242, 1987 D.C. App. LEXIS 377 (1987).

Zoning board's general conclusions set forth in its order granting special exception for addition to university building were not sufficiently responsive to opponents' concerns with respect to traffic effects of the addition where order dealt with conflicts between pedestrians on the sidewalk and persons entering the facility by foot from cars but with not the effect of traffic attempting to enter the proposed underground garage from the street. *D.C. Code 1981, § 1-1509(e). Draude v. District of Columbia Bd. of*

Zoning Adjustment, 527 A.2d 1242, 1987 D.C. App. LEXIS 377 (1987).

Decision of Board of Zoning Adjustment denying special exception for increased enrollment at a private school was inadequate where few findings addressed the contested issues or set forth "basic" and "underlying" facts on such issues and nowhere in the record was there a rational basis for the Board's conclusion that addition of 15 students would cause the school to become objectionable and inconsistent with R-1-A zoning. *D.C. Code § 1-1509(e). Washington Ethical Soc. v. District of Columbia Board of Zoning Adjustment*, 421 A.2d 14, 1980 D.C. App. LEXIS 374 (1980).

Although Board of Zoning Adjustment, in passing on private school's application for special exception to increase enrollment, found that the present 65 student enrollment exceeded occupancy certificate by 25 students, the finding was in limbo and was deficient as nowhere in the record was there any evidence which distinguished the impact of 40 students from the impact of 65 students or the 80 students to which school wanted to increase enrollment, and there was no indication of whether Board found adverse effects attributable to the 25 students who exceed the current occupancy certificate or the 15 who might be added. *D.C. Code § 1-1509(e). Washington Ethical Soc. v. District of Columbia Board of Zoning Adjustment*, 421 A.2d 14, 1980 D.C. App. LEXIS 374 (1980).

Findings of "other objectionable conditions," in denial of special exception for increased enrollment at private school, were deficient where findings on student activities in the neighborhood, lunch facilities and matters of litter, trash and vandalism were primarily summaries of testimony and many witnesses could not attribute present problems to petitioners' students and little of the testimony couched in terms of future impact on noise, litter or other adverse conditions and there was substantial expert testimony from Municipal Planning Office recommending approval after considering location, number of students, etc. *D.C. Code § 1-1509(e). Washington Ethical Soc. v. District of Columbia Board of Zoning Adjustment*, 421 A.2d 14, 1980 D.C. App. LEXIS 374 (1980).

Finding on issue of parking spaces, for purpose of special exception for increased enrollment at private school, was deficient where Board of Zoning Adjustment outlined schools' plan to prove 12 to 13 parking spaces on school property and ten more spaces at an off-site location but nowhere did the Board take cognizance of the eight space minimum or state that the proposed 22 to 24 parking spaces were not ample and merely hinted at some inadequacy by suggesting that school offered no covenant to guarantee the ten off-site spaces and did not

consider its authority to require a covenant for off-site parking as a condition for granting the exception if 22 spaces were required. D.C. Code § 1-1509(e). *Washington Ethical Soc. v. District of Columbia Board of Zoning Adjustment*, 421 A.2d 14, 1980 D.C. App. LEXIS 374 (1980).

Although Board of Zoning Adjustment may have been of view that special-exception petitioners' claims as a church-related school were without merit and that there were no distinctions between petitioners and others and that constitutional issues had been decided adversely, a decision by the Board, which denied the request, would have been appropriate in view of petitioners' contention that a school operated or sponsored by a religious organization is a land use permitted as of right in an R-1-A area. D.C. Code § 1-1509(e). *Washington Ethical Soc. v. District of Columbia Board of Zoning Adjustment*, 421 A.2d 14, 1980 D.C. App. LEXIS 374 (1980).

Board of Zoning Adjustment violated neither its own rules nor Administrative Procedure Act by receiving variance applicant's proposed order after the record was closed and issuing findings of fact and conclusions of law almost identical to those submitted by the applicants, without serving a copy of the proposed order on petitioner, as petitioner took advantage of his right to be present and submit rebuttal evidence and to cross-examine witnesses at contested case proceedings and matter submitted was not evidence but conclusions which might be drawn from the evidence. D.C. Code §§ 1-1509(b), 5-420; U.S. Const. Amends. 5, 14. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

Notice which was given with respect to time, place and nature of hearing on request for a variance from minimum lot requirement of 5,000 square feet in order to construct a single-family detached dwelling on a substandard lot and which was effected by a sign posted on lot, letters mailed to addresses within 200 feet of lot, and by newspaper publication was not defective for alleged failure to describe scheduled action as a lot width variance instead of a lot area variance. D.C. Code §§ 1-1509(a), 1-1510. *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231, 1979 D.C. App. LEXIS 381 (1979).

Evidence was sufficient to support findings of board of zoning adjustment, which granted special exception for construction of professional office building in special purpose district, despite evidence antithetical to board's conclusion. D.C. Code § 1-1509(e). *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 1978 D.C. App. LEXIS 577 (1978).

Discretion of Board of Zoning Adjustment in reviewing special exception applications is limited to determining whether proposed excep-

tion satisfies requirements of regulation under which it is sought, and burden of demonstrating this rests with applicant. D.C. Code § 1-1509(e). *Dupont Circle Citizens Asso. v. District of Columbia Bd. of Zoning Adjustment*, 390 A.2d 1009, 1978 D.C. App. LEXIS 555 (1978).

Order of District of Columbia Board of Zoning Adjustment upon application for special exception in contested case must contain demonstration of rational connection between facts found and choice made, and generalized, conclusory or incomplete findings are not sufficient; there must be findings on each material fact with full reasons given to support each finding. D.C. Code § 1-1509(e). *Dupont Circle Citizens Asso. v. District of Columbia Bd. of Zoning Adjustment*, 390 A.2d 1009, 1978 D.C. App. LEXIS 555 (1978).

Findings and conclusions of District of Columbia Board of Zoning Adjustment, granting special exception for lot for use as parking lot in residential zone, was unsupported by evidence in view of paucity of testimony on impact of proposed facility on area traffic and Board's failure to get a Department of Transportation analysis of such question. D.C. Code § 1-1509(e). *Dupont Circle Citizens Asso. v. District of Columbia Bd. of Zoning Adjustment*, 390 A.2d 1009, 1978 D.C. App. LEXIS 555 (1978).

Although special exception applicant itself did almost nothing to demonstrate that proposed exception satisfied relevant regulations, and hearing was little more than formality, granting of special exception, for use of particular lot as parking lot, by District of Columbia Board of Zoning Adjustment was supported by adequate consideration of application and evidence including detailed reports submitted to Board by public agencies. D.C. Code § 1-1509(e). *Dupont Circle Citizens Asso. v. District of Columbia Bd. of Zoning Adjustment*, 390 A.2d 1009, 1978 D.C. App. LEXIS 555 (1978).

Findings and conclusion of District of Columbia Board of Zoning Adjustment, in granting special exception for use of lot as parking lot in a residential zone, were inadequate in view of Board's failure to adequately consider issues such as traffic, impact on neighborhood character, and need. D.C. Code § 1-1509(e). *Dupont Circle Citizens Asso. v. District of Columbia Bd. of Zoning Adjustment*, 390 A.2d 1009, 1978 D.C. App. LEXIS 555 (1978).

Where board of zoning adjustment granted university's application for exception to permit university uses in residential district, contingent upon university's fulfillment of certain conditions, including requirement that university construct three lane at-grade intersection at specified location, memorandum subsequently issued by board interpreting such condition as contingent upon widening of street by department of highways and traffic was contrary to plain meaning of original order and

resulted in material revision of terms under which exception was granted, and, in absence of proper notice and opportunity to be heard, such action was invalid. D.C. Code § 1-1509. *Citizens Asso. of Georgetown v. District of Columbia Board of Zoning Adjustment*, 365 A.2d 372, 1976 D.C. App. LEXIS 399 (1976).

Where board of zoning adjustment's reasons for denying area variance merely quoted pertinent standards in subsection of code without explaining how proposed variance would violate such standards, except for one terse sentence dealing with property owner's alleged self-imposition of hardship, board's conclusions and findings were insufficient. D.C. Code §§ 1-1509(e), 5-420(3). *A. L. W., Inc. v. District of Columbia Bd. of Zoning Adjustment*, 338 A.2d 428, 1975 D.C. App. LEXIS 392 (1975).

Although District of Columbia Board of Zoning Adjustment may not have been required to consider impact on existing public and private schools in passing on request by religious organization for special exception to allow construction of private school for kindergarten and elementary school age children in residential area, the Board committed procedural error, requiring remand, in not implementing its preliminary decision to seek "comments" from Board of Education respecting possible adverse impact on existing schools and in relying on information contained in letter from Superintendent of Schools as to such impact without serving such letter on the parties. D.C. Code §§ 1-1501 et seq., 1-1509, 5-414. *Rose Lees Hardy Home & School Asso. v. District of Columbia Bd. of Zoning Adjustment*, 324 A.2d 701, 1974 D.C. App. LEXIS 261 (1974).

Application for special exception to allow construction in residential zone of private school for kindergarten and elementary school age children resulted in a "contested case" within meaning of the District of Columbia Administrative Procedure Act. D.C. Code §§ 1-1501 et seq., 1-1509. *Rose Lees Hardy Home & School Asso. v. District of Columbia Bd. of Zoning Adjustment*, 324 A.2d 701, 1974 D.C. App. LEXIS 261 (1974).

On application for variance to convert semi-nary to nursing home, it would be proper for zoning board to require applicant to present evidence to show that his proposed use would not create traffic flow and parking problems inconsistent with R-1-B residential neighborhood, and board must give applicant sufficient notice of issues on which it seeks proof. D.C. Code §§ 1-1501 et seq., 1-1509(a, b). *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 1974 D.C. App. LEXIS 222 (1974).

Findings of Board of Zoning Adjustment on objections to granting exception to permit private boys' high school would not be inferred from other findings that Board did make. D.C. Code §§ 1-1509, 5-414. *Dietrich v. District of Columbia Board of Zoning Adjustment*, 293 A.2d 470, 1972 D.C. App. LEXIS 222 (1972).

Order of District of Columbia Board of Zoning Adjustment merely summarizing testimony, in hearing on application for special exception to permit use of property for boys' high school, and containing conclusions simply echoing statutory language authorizing grant of a variance was insufficient to comply with statutory requirement that decision be accompanied by findings of fact consisting of a concise statement of conclusions upon each contested issue of fact. D.C. Code §§ 1-1509, 5-414. *Dietrich v. District of Columbia Board of Zoning Adjustment*, 293 A.2d 470, 1972 D.C. App. LEXIS 222 (1972).

Order of District of Columbia Board of Zoning Adjustment upon application for special exception in contested case must contain demonstration of a rational connection between facts found and choice made, and generalized, conclusory or incomplete findings are not sufficient; findings must support end result in a discernible manner, and result reached must be supported by subsidiary findings of basic facts on all material issues; there must be findings of each material fact with full reasons given to support each finding. D.C. Code §§ 1-1509, 5-414. *Dietrich v. District of Columbia Board of Zoning Adjustment*, 293 A.2d 470, 1972 D.C. App. LEXIS 222 (1972).

§ 2-510. Judicial review.

(a) Any person suffering a legal wrong, or adversely affected or aggrieved, by an order or decision of the Mayor or an agency in a contested case, is entitled to a judicial review thereof in accordance with this subchapter upon filing in the District of Columbia Court of Appeals a written petition for review. If the jurisdiction of the Mayor or an agency is challenged at any time in any proceeding and the Mayor or the agency, as the case may be, takes jurisdiction, the person challenging jurisdiction shall be entitled to an immediate judicial review of that action, unless the Court shall otherwise hold. The reviewing Court may by rule prescribe the forms and contents of the petition and, subject

to this subchapter, regulate generally all matters relating to proceedings on such appeals. A petition for review shall be filed in such Court within such time as such Court may by rule prescribe and a copy of such petition shall forthwith be served by mail by the clerk of the Court upon the Mayor or upon the agency, as the case may be. Within such time as may be fixed by rule of the Court, the Mayor or such agency shall certify and file in the Court the exclusive record for decision and any supplementary proceedings, and the clerk of the Court shall immediately notify the petitioner of the filing thereof. Upon the filing of a petition for review, the Court shall have jurisdiction of the proceeding, and shall have power to affirm, modify, or set aside the order or decision complained of, in whole or in part, and, if need be, to remand the case for further proceedings, as justice may require. Filing of a petition for review shall not in itself stay enforcement of the order or decision of the Mayor or the agency, as the case may be. The Mayor or the agency may grant, or the reviewing Court may order, a stay upon appropriate terms. The Court shall hear and determine all appeals upon the exclusive record for decision before the Mayor or the agency. The review of all administrative orders and decisions by the Court shall be limited to such issues of law or fact as are subject to review on appeal under applicable statutory law, other than this subchapter. In all other cases the review by the Court of administrative orders and decisions shall be in accordance with the rules of law which define the scope and limitations of review of administrative proceedings. Such rules shall include, but not be limited to, the power of the Court:

(1) So far as necessary to decision and where presented, to decide all relevant questions of law, to interpret constitutional and statutory provisions, and to determine the meaning or applicability of the terms of any action;

(2) To compel agency action unlawfully withheld or unreasonably delayed; and

(3) To hold unlawful and set aside any action or findings and conclusions found to be:

(A) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) Contrary to constitutional right, power, privilege, or immunity;

(C) In excess of statutory jurisdiction, authority, or limitations or short of statutory jurisdiction, authority, or limitations or short of statutory rights;

(D) Without observance of procedure required by law, including any applicable procedure provided by this subchapter; or

(E) Unsupported by substantial evidence in the record of the proceedings before the Court.

(b) In reviewing administrative orders and decisions, the Court shall review such portions of the exclusive record as may be designated by any party. The Court may invoke the rule of prejudicial error.

(Oct. 21, 1968, 82 Stat. 1209, Pub. L. 90-614, § 11; July 29, 1970, 84 Stat. 582, Pub. L. 91-358, title I, § 162; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(II), 22 DCR 2055; Mar. 29, 1977, D.C. Law 1-96, § 3(a), (c), 23 DCR 9532b.)

Cross references. — Banks and banking, regional interstate banking, application for approval, judicial review, see § 26-704.

Banks and banking, regional interstate banking, nonregional bank holding companies, review of hearing to determine compliance with orders as to commitments, see § 26-706.01.

Banks and banking, savings and loan acquisitions, review of hearing to determine compliance with orders as to commitments, see § 26-1204.

Banks and banking, savings and loan acquisitions, review of hearing to determine compliance with orders as to commitments, see § 26-1205.

Boxing and wrestling commission, powers to issue permits and licenses, suspension or revocation, contested case provisions applicable, see § 3-606.

Child care services and facilities, child development facilities regulation, judicial review of adverse actions, see § 7-2045.

Court of Appeals, jurisdiction, administrative orders and decisions, see § 11-722.

Environmental controls, underground storage tank management, licensee or certificate holder, appeal of adverse action, see § 8-113.10.

Funeral directors, denial, suspension, or revocation of license, appeal procedures, see § 3-410.

General license law, license, certification, or registration requirement, judicial review of final decisions regarding, see § 47-2853.23.

Healthcare entity conversion, approval or disapproval by attorney general, judicial review of decision of corporation counsel, see § 44-607.

Health occupations, licensing of health professionals, judicial and administrative review of actions of board or mayor, see § 3-1205.20.

Health services planning, judicial review of certificate of need decisions, see § 44-414.

Human rights, procedures, judicial review of orders and decisions upon filing of written petition for review, see § 2-1403.14.

Insurance, compulsory/no-fault motor vehicle insurance, orders and decisions of board of review, judicial review, see § 31-2403.

Insurance, holding companies, judicial review of any determination, rule, regulation, or order of mayor respecting holding companies, see § 31-714.

Insurance, property and liability insurance guaranty association, powers and duties of mayor, judicial review of final actions or orders of mayor, see § 31-5507.

Insurance, standards to identify insurance companies deemed to be in hazardous financial condition, judicial review, see § 31-2103.

Labor, employment services, licensing and regulation, judicial review of adverse actions taken against licensee, see § 32-414.

Labor, family and medical leave, investigation of complaints, judicial review of adverse actions, see § 32-509.

Labor, occupational safety and health, judicial review of adverse actions, see § 32-1116.

Labor, parental leave, procedure and remedies for violations, judicial review of violation determinations, see § 32-1204.

labor, retaliatory discharge, discrimination, right to judicial review of adverse actions taken as to, see § 32-1117.

Medicaid provider fraud prevention, fraudulent claims, additional civil penalties, judicial review of adverse action, see § 4-803.

Motor vehicles and traffic, operators, implied consent to blood alcohol content tests, judicial review of order revoking or denying license, see § 50-1907.

Motor vehicles and traffic, traffic adjudication, administrative review, superior court appeal and review, see § 50-2304.05.

Nursing homes and community residence facilities, involuntary discharge, transfer, and relocation of residents, judicial review of involuntary discharge, transfer or relocation, see § 44-1003.13.

Personal property, disposition of unclaimed property, judicial review of adverse action on claim, see § 41-127.

Real property, rental housing conversion and sale, judicial review of certain proceedings, see § 42-3405.08.

Real property, rental housing conversion and sale, judicial review of mayoral actions, see § 42-3405.09.

Solid waste management, paper and paper products, minimum recycled content, exemption application procedure, review of decision on application, see § 8-1021.

Veterinarians, denial, suspension, or revocation of license, review of adverse decision, see § 3-511.

Prior Codifications. — 1981 Ed., § 1-1510. 1973 Ed., § 1-1510.

Legislative history of Law 1-19. — For legislative history of D.C. Law 1-19, see Historical and Statutory Notes following § 2-501.

Legislative history of Law 1-96. — For legislative history of D.C. Law 1-96, see Historical and Statutory Notes following § 2-531.

Editor's notes. — Uniform Law: This section is based upon § 15 of the Uniform Law Commissioners' Model State Administrative Procedure Act (1961 Act).

CASE NOTES

ANALYSIS

Admissibility of evidence.
 Agency actions in excess of authority.
 Agency interpretation and application of its rules and regulations.
 Civil rights.
 Construction with other statutes.
 Contested cases.
 —Adjudicatory proceedings, contested cases.
 —Bid protests, contested cases.
 —In general.
 —Jurisdiction, contested cases.
 —Quasi-legislative or quasi-judicial determinations, contested cases.
 Contract appeals board.
 Discretion of administrative agency.
 Disposition of appeal.
 Due process.
 Elections and election contests.
 Exhaustion of administrative remedies.
 Extraordinary writs.
 Federal precedent.
 Finality of agency action.
 Findings of fact and conclusions of law.
 Harmless or prejudicial error.
 Health and environment regulations and offense.
 Judicial notice.
 Jurisdiction.
 Labor and employment.
 —In general.
 —Police and firefighters, labor and employment.
 Landlord and tenant.
 —Re-entry and recovery of possession by landlord.
 —Rent control.
 Liquor licenses and taxes.
 Parties and standing.
 Presumptions and burden of proof.
 Prisons and prisoners.
 Professional and occupational regulation.
 Public retirement boards and commissions—In general.
 —Police and firefighters, public retirement boards and commissions.
 Public service commission and utility regulation.
 Public service vehicles and taxi licensing.
 Public welfare and social security.
 Questions of law and fact, generally.
 Record.
 Regulated industries generally.
 Res judicata and collateral estoppel.
 Review of decisions.
 —Appellate review, review of decisions.
 —Deference to agency, review of decisions.
 —In general.
 —Preservation of issues, review of decisions.
 —Scope of review, review of decisions.

—Standard of review, review of decisions.
 —Substantial evidence for findings, review of decisions.
 Right of review.
 Time of application for review.
 Unemployment compensation.
 —Administrative review, unemployment compensation.
 —Determination on review, unemployment compensation.
 —Evidence generally, unemployment compensation.
 —Funds, payments, amount and period, unemployment compensation.
 —Harmless or prejudicial error, unemployment compensation.
 —In general.
 —Questions of law and fact, unemployment compensation.
 —Record, unemployment compensation.
 —Right to compensation, unemployment compensation.
 —Scope of review, unemployment compensation.
 —Time for appellate proceedings, unemployment compensation.
 —Weight and sufficiency of evidence, unemployment compensation.
 Weight and sufficiency of evidence, generally.
 Workers compensation proceedings.
 Zoning and planning.
 —Decisions reviewable, zoning and planning.
 —In general.
 —Modification of regulations generally, zoning and planning.
 —Operation and effect of regulations, zoning and planning.
 —Permits, certificates and approvals, zoning and planning.
 —Scope of review, zoning and planning.
 —Variances or exceptions, zoning and planning.

Admissibility of evidence.

Administrative agencies are invested with a greater discretion than trial judges in determining the admissibility of evidence. *District of Columbia v. PSC of D.C.*, 802 A.2d 373, 2002 D.C. App. LEXIS 376 (2002).

Technical rules of evidence applicable to the trial of court cases do not govern agency proceedings. *Jadallah v. District of Columbia Dep't of Employment Services*, 476 A.2d 671, 1984 D.C. App. LEXIS 395 (1984).

Hearsay evidence, if it has probative value, is admissible at administrative hearings, since reliability and probative value of evidence does not always turn simply on whether it falls within the legal definition of hearsay evidence and since agency members, unlike juries, are capable of properly assessing reliability and

weight of evidence that is hearsay in nature. *Jadallah v. District of Columbia Dep't of Employment Services*, 476 A.2d 671, 1984 D.C. App. LEXIS 395 (1984).

Rigid rules of evidence utilized in a formal trial do not govern administrative proceedings; consequently, hearsay is generally admissible if reliable and may be given such probative force as is warranted. D.C. Code §§ 1-1501 et seq., 1-1510(3)(E). *Wallace v. District Unemployment Compensation Board*, 294 A.2d 177, 1972 D.C. App. LEXIS 229 (1972).

Agency actions in excess of authority.

A request for a continuance is addressed to the sound discretion of an agency and will be set aside only for an abuse of discretion. *King v. D.C. Water & Sewer Auth.*, 803 A.2d 966, 2002 D.C. App. LEXIS 382 (2002).

Factors relevant to determining whether a trial court or agency abused its discretion in denying a request for a continuance include the reasons for the request, the prejudice that would result from its denial, the parties' diligence in seeking relief, any lack of good faith, and any prejudice to the opposing party. *King v. D.C. Water & Sewer Auth.*, 803 A.2d 966, 2002 D.C. App. LEXIS 382 (2002).

Inclement weather combined with fragile health entitled petitioner to continuance of administrative hearing at which she failed to appear, even though a weather advisory had been issued the day before the hearing and the petitioner notified the officer after the time for the hearing to begin; the petitioner walked with a cane and was afraid of falling on ice, the denial of the continuance deprived the petitioner of the opportunity to contest her water bills, and requiring the petitioner to request a continuance the day before the hearing would put excessive weight on both knowledge of and the accuracy of overnight weather predictions. *King v. D.C. Water & Sewer Auth.*, 803 A.2d 966, 2002 D.C. App. LEXIS 382 (2002).

Administrative agency is creature of statute and may not act in excess of its statutory authority. *District Intown Props. v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 680 A.2d 1373, 1996 D.C. App. LEXIS 139 (1996).

Purported exercise of jurisdiction beyond that conferred upon administrative agency by Legislature is *ultra vires* and a nullity. *District Intown Props. v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 680 A.2d 1373, 1996 D.C. App. LEXIS 139 (1996).

Administrative agency has no authority to conduct factual or legal inquiry which cannot affect proper disposition of dispute. *District Intown Props. v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 680 A.2d 1373, 1996 D.C. App. LEXIS 139 (1996).

Mayor's agent, like any administrative agency, must operate within applicable statutory constraints in performing his or her assigned task under Preservation Act. D.C. Code 1981, § 1-1510(a)(3)(C). *District of Columbia Preservation League v. Department of Consumer & Regulatory Affairs*, 646 A.2d 984, 1994 D.C. App. LEXIS 138 (1994), amended by 1994 D.C. App. LEXIS 166 (D.C. Sept. 20, 1994).

Agency interpretation and application of its rules and regulations.

In general, an agency's interpretation of its own regulation is controlling unless plainly erroneous or inconsistent with the regulation; however, such deference is warranted only when the language of the regulation is ambiguous. *Barrick Goldstrike Mines, Inc. v. Whitman*, 260 F.Supp.2d 28, 2003 U.S. Dist. LEXIS 13158 (2003).

District court is required to give effect to an agency regulation that is a reasonable interpretation of an ambiguous statute; if the statutory language is clear on its face, the court's inquiry must stop there. *Barrick Goldstrike Mines, Inc. v. Whitman*, 260 F.Supp.2d 28, 2003 U.S. Dist. LEXIS 13158 (2003).

If the statute is ambiguous with respect to a particular issue, the district court must decide whether the agency's interpretation is a permissible construction of the statute. *Barrick Goldstrike Mines, Inc. v. Whitman*, 260 F.Supp.2d 28, 2003 U.S. Dist. LEXIS 13158 (2003).

Office of Human Rights (OHR) was required to award prejudgment interest on backpay awarded to former Department of Corrections (DOC) employee, who was involved in protracted administrative dispute which spanned 17 years and involved allegations of sexual and racial discrimination, under rule that required agency to take remedial actions when an employee was discriminated against in violation of Human Rights Act (HRA); claimant endured a particularly long and procedurally complicated ordeal, and, thus, interest was particularly appropriate to compensate her for the lost time-value of her recovery. D.C. Office of Human Rights v. D.C. Dep't of Corr., 40 A.3d 917, 2012 D.C. App. LEXIS 139 (2012).

The Court of Appeals will defer to an agency's construction of a statute it is charged with administering as long as that construction enhances the general purposes and policies underlying the statute. *Office of the People's Counsel v. PSC of D.C.*, 889 A.2d 1003, 2006 D.C. App. LEXIS 1 (2006).

In considering whether there is manifest error in agency ruling, as would preclude application of *res judicata* to ruling, Court of Appeals remains mindful that it owes deference to an agency's interpretation of the statute it admin-

isters. *Borger Mgmt. v. Sindram*, 886 A.2d 52, 2005 D.C. App. LEXIS 536 (2005).

With respect to questions of law, the Court of Appeals will uphold the agency's interpretation of the statute if it is responsible for administering unless it is unreasonable in light of prevailing law, or conflicts with the statute's plain meaning or legislative history; however, if the agency's decision is based upon a material misconception of the law, the court will reject it. *Parreco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 2005 D.C. App. LEXIS 540 (2005).

Review of District of Columbia Human Rights Act (DCHRA) award of compensatory damages is limited and highly deferential, and appellate court will reverse the award only if the agency's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Psychiatric Inst. v. D.C. Comm'n on Human Rights*, 871 A.2d 1146, 2005 D.C. App. LEXIS 143 (2005).

The Court of Appeals defers to an administrative agency's interpretation of a statute it administers if it is reasonable and not plainly wrong or inconsistent with its legislative purpose. *Majerle Mgmt. v. D.C. Rental Hous. Comm'n*, 866 A.2d 41, 2004 D.C. App. LEXIS 698 (2004).

Generally, Court of Appeals will defer to an agency's interpretation of the statute and regulations it administers unless its interpretation is unreasonable or in contravention of the language or legislative history of the statute and/or regulations. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

Where an agency's decision is largely based upon interpretation of a statute or regulation, appellate court defers if the decision is reasonable in light of the language of the statute or rule, the legislative history, and judicial precedent. *Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs.*, 859 A.2d 1058, 2004 D.C. App. LEXIS 514 (2004).

Court of Appeals would defer to Department of Employment Services (DOES) director's interpretation of statutory subsection establishing one year limitations period for requesting modification of workers' compensation benefits as requiring existing compensation order before modification may be requested and granted, given that such interpretation gives meaning to statutory phrase "new compensation order," as provided in separate subsection indicating that, upon completion of review of modification request, "new compensation order" shall issue. *Sodexo Marriott Corp. v. D.C. Dep't of Empl. Servs.*, 858 A.2d 452, 2004 D.C. App. LEXIS 444 (2004).

Court of Appeals' deference to decision of director of Department of Employment Services (DOES) in workers' compensation proceeding extends to matters of statutory inter-

pretation, yielding only where director's reasoning is unreasonable in light of language of statute, legislative history, or judicial precedent. *Sodexo Marriott Corp. v. D.C. Dep't of Empl. Servs.*, 858 A.2d 452, 2004 D.C. App. LEXIS 444 (2004).

When statutes are susceptible of different readings it is practically axiomatic that administrative interpretation, practice, and usage is accorded great weight as an extrinsic aid in the interpretation of statutes by the courts. *Orius Telcoms., Inc. v. D.C. Dep't of Empl. Servs.*, 857 A.2d 1061, 2004 D.C. App. LEXIS 417 (2004).

The Court of Appeals generally sustains the agency's interpretation of a statute even though there may be alternative, reasonable constructions. *Providence Hosp. v. D.C. Dep't of Empl. Servs.*, 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

For the purpose of statutory interpretation, the interpretation of the agency charged with its administration is binding unless it is plainly erroneous or inconsistent with the enabling statute. *Providence Hosp. v. D.C. Dep't of Empl. Servs.*, 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

Recognizing agency expertise, the Court of Appeals accords great weight to any reasonable construction of a statute by the agency charged with its administration. *Providence Hosp. v. D.C. Dep't of Empl. Servs.*, 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

The Court of Appeals looks favorably on an agency's decision to adopt procedures employed by the courts of the District of Columbia, when there is no applicable regulation. *Felicity'S, Inc. v. D.C. Bd. of Appeals & Review*, 851 A.2d 497, 2004 D.C. App. LEXIS 317 (2004).

Although the reviewing court is vested with the final authority on issues of statutory construction, it must defer to an agency's interpretation of the statute and implementing regulations which it administers, so long as that interpretation is reasonable and consistent with the statutory language. *Mullin v. D.C. Rental Hous. Comm'n*, 844 A.2d 1138, 2004 D.C. App. LEXIS 65 (2004), writ of certiorari denied by 543 U.S. 1006, 125 S. Ct. 615, 160 L. Ed. 2d 468, 2004 U.S. LEXIS 7782, 73 U.S.L.W. 3322 (2004).

When the Board of Zoning Adjustment's (BZA) decision turns on its interpretation of a regulation that agency is charged with implementing, that interpretation must be upheld unless it is plainly erroneous or inconsistent with the regulation. *Mullin v. D.C. Rental Hous. Comm'n*, 844 A.2d 1138, 2004 D.C. App. LEXIS 65 (2004), writ of certiorari denied by 543 U.S. 1006, 125 S. Ct. 615, 160 L. Ed. 2d 468, 2004 U.S. LEXIS 7782, 73 U.S.L.W. 3322 (2004).

While the Court of Appeals is the final authority on questions of statutory construction,

and its review is de novo, the Court will defer to the interpretation of the Director of Department of Employment Services of the Workers' Compensation Act if his interpretation is reasonable in light of the Act's language, its legislative history, and judicial precedent. *Hart v. D.C. Dep't of Empl. Servs.*, 843 A.2d 746, 2004 D.C. App. LEXIS 59 (2004).

Court of Appeals would defer to reasonable interpretation by Director of Department of Employment Services of statutory exemption from workers' compensation coverage for employee and employer, who were not residents of District of Columbia (DOC) and whose employment contract was entered into in another state, while employee was temporarily or intermittently working in DOC, as referring to duration and frequency of employee's actual physical presence in DOC, rather than virtual presence of claimant, a nonresident professional wrestler who was injured in match in DOC, through weekly television broadcasts of his wrestling bouts and daily sales of his action figure dolls and other personal memorabilia. *Hart v. D.C. Dep't of Empl. Servs.*, 843 A.2d 746, 2004 D.C. App. LEXIS 59 (2004).

Given the expertise of the District of Columbia Contract Appeals Board (CAB), the Court of Appeals gives careful consideration to the CAB's interpretation of its governing statute because legal interpretations by tribunals having expertise are helpful even if not compelling. *Hart v. D.C. Dep't of Empl. Servs.*, 843 A.2d 746, 2004 D.C. App. LEXIS 59 (2004).

Recognizing agency expertise, the Court of Appeals accords great weight to any reasonable construction of a statute by the agency charged with its administration. *Mills v. D.C. Dep't of Empl. Servs.*, 838 A.2d 325, 2003 D.C. App. LEXIS 751 (2003).

Although the Court of Appeals accords weight to agency's construction of the statutes and regulations which it administers, the ultimate responsibility for deciding questions of law is assigned to the Court. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Appellate court accords great weight to any reasonable construction of regulatory statute by agency charged with its administration. *UPS v. D.C. Dep't of Empl. Servs.*, 834 A.2d 868, 2003 D.C. App. LEXIS 627 (2003).

Reviewing court will defer to an agency's interpretation of a statute that it administers so long as it is not plainly wrong or inconsistent with the legislature's intent. *UPS v. D.C. Dep't of Empl. Servs.*, 834 A.2d 868, 2003 D.C. App. LEXIS 627 (2003).

Court of Appeals generally accords great deference to the agency's interpretation of its own regulations, so long as that interpretation is

reasonable and consistent with the statutory language, and it leaves an agency's decision undisturbed if it flows rationally from findings of fact that are supported by substantial evidence in the record. *UPS v. D.C. Dep't of Empl. Servs.*, 834 A.2d 868, 2003 D.C. App. LEXIS 627 (2003).

In reviewing an administrative agency's construction of a statute, reviewing court accords great deference to the interpretation of the agency charged with its administration, particularly if the interpretation is of long standing and has been consistently applied; less deference is appropriate where interpretation lacks these attributes. *Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs.*, 832 A.2d 1267, 2003 D.C. App. LEXIS 570 (2003).

Although the Court of Appeals accords weight to the agency's construction of the statutes which it administers, the ultimate responsibility for deciding questions of law is assigned to the Court. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

The Court of Appeals gives great deference to an agency's interpretations of the statute it administers and of its own regulations, so long as such interpretations are not plainly erroneous or inconsistent with the statute or regulation. *Bio-Medical Applications of the Dist. of Columbia v. D.C. Bd. of Appeals & Review*, 829 A.2d 208, 2003 D.C. App. LEXIS 479 (2003).

The Court of Appeals defers to an administrative agency's interpretation of the statute that it administers if that interpretation is a reasonable one in light of the language of the statute and its legislative history. *Bio-Medical Applications of the Dist. of Columbia v. D.C. Bd. of Appeals & Review*, 829 A.2d 208, 2003 D.C. App. LEXIS 479 (2003).

Credibility determinations of an ALJ in a workers' compensation matter are accorded special deference by the Court of Appeals. *Gross v. D.C. Dep't of Empl. Servs.*, 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

Legal interpretations by tribunals having expertise are helpful on appeal, even if not compelling. *Gross v. D.C. Dep't of Empl. Servs.*, 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

Upon review of an administrative decision, deference is properly accorded an agency's interpretation of the administrative regulation it enforces unless it is plainly erroneous or inconsistent with the regulation. *Gross v. D.C. Dep't of Empl. Servs.*, 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

In interpreting statutory or regulatory provisions, court looks first to the plain meaning. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

The Court of Appeals reviews questions of law de novo, deferring to the interpretation of

the workers' compensation statute the Director of the Department of Employment Services (DOES) enforces unless the interpretation conflicts with the statute, is inconsistent with the governing regulation, or otherwise is contrary to established legal doctrine. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

The Court of Appeals accords considerable weight to an agency's construction of a statute which the agency administers. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

When the Board of Zoning Adjustment's (BZA's) decision turns on its interpretation of a regulation that agency is charged with implementing, that interpretation must be upheld unless it is plainly erroneous or inconsistent with the regulation. *Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment*, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

If the Board of Zoning Adjustment (BZA) is interpreting its own governing statute and regulations, the Court of Appeals gives its construction particular deference. *Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment*, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

The Court of Appeals generally defers to an administrative agency's interpretation of the statute and regulations it administers unless its interpretation is unreasonable or is contradicted by the specific language of the law or its legislative history. *Moore v. D.C. Dep't of Empl. Servs.*, 813 A.2d 227, 2002 D.C. App. LEXIS 734 (2002).

The Court of Appeals defers to an agency's interpretation of its own regulations unless plainly erroneous or inconsistent with the regulations; therefore, absent some compelling indication that the interpretation is erroneous, the Court is bound by the agency's construction of its own regulations. *Moore v. D.C. Dep't of Empl. Servs.*, 813 A.2d 227, 2002 D.C. App. LEXIS 734 (2002).

On issues of statutory construction, the Court of Appeals defers to the agency's interpretation unless it is plainly wrong or inconsistent with the legislative intent; however, where the statutory requirement has been judicially created, review is considerably less constrained. *Mergentime Perini v. D.C. Dep't of Empl. Servs.*, 810 A.2d 901, 2002 D.C. App. LEXIS 670 (2002).

Court of Appeals accords considerable deference to the agency's interpretation of the Worker's Compensation Act (WCA). *Cather v. D.C. Dep't of Empl. Servs.*, 808 A.2d 766, 2002 D.C. App. LEXIS 558 (2002).

The Court of Appeals accords great deference to an agency's interpretation of its own administrative regulations and will uphold that construction unless clearly erroneous or inconsistent with the regulations. *Sisson v. D.C. Bd. of*

Zoning Adjustment, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

Appellate court defers to agency findings of fact so long as they are supported by substantial evidence. *Chase v. D.C. Dep't of Empl. Servs.*, 804 A.2d 1119, 2002 D.C. App. LEXIS 487 (2002).

When an agency's decision is based on an interpretation of the statute and regulations which it administers, Court of Appeals will uphold that interpretation as long as it is not unreasonable or contrary to the language or legislative history of the statute. *McKenzie v. D.C. Dep't of Human Servs.*, 802 A.2d 356, 2002 D.C. App. LEXIS 377 (2002).

While Court of Appeals does not give the Public Service Commission's (PSC) legal conclusion the same deference owed factual determinations, it nonetheless will sustain conclusion if it is reasonable and based upon factors within the PSC's expertise. *Office of the People's Counsel v. PSC*, 799 A.2d 376, 2002 D.C. App. LEXIS 297 (2002).

When reviewing Public Service Commission's (PSC) legal determinations with respect to matters within its specialized competence, Court of Appeals must be appropriately deferential. *Office of the People's Counsel v. PSC*, 799 A.2d 376, 2002 D.C. App. LEXIS 297 (2002).

In general, Court of Appeals defers to Public Service Commission's (PSC) construction of a statute it is charged with administering, so long as that construction enhances the general purposes and policies underlying the statute. *Office of the People's Counsel v. PSC*, 799 A.2d 376, 2002 D.C. App. LEXIS 297 (2002).

Questions of regulatory policy of Public Service Commission (PSC), as distinct from questions of law, are beyond both the jurisdiction and the competence of a reviewing court. *Office of the People's Counsel v. PSC of the Dist. of Columbia*, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

In evaluating the Public Service Commission's (PSC) rationale, it is especially important to accord great respect to the Commission in a complex, esoteric area such as rate-making in which the Commission has been entrusted with the difficult task of deciding among many competing arguments and policies. *Office of the People's Counsel v. PSC of the Dist. of Columbia*, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

The Court of Appeals gives deference to an agency's interpretation of its governing statute so long as that interpretation is reasonable and consistent with the statutory language. *Union Light & Power Co. v. D.C. Dep't of Empl. Servs.*, 796 A.2d 665, 2002 D.C. App. LEXIS 85 (2002).

Court of Appeals will ordinarily defer to an agency's reasonable interpretation of the statute that it administers; to receive such deference, however, agency's interpretation must

reflect the careful legal and policy analysis required in making choices among several competing statutory interpretations, each of which has substantial support, and the record must provide evidence that the agency considered the language, structure, or purpose of the statute when selecting an interpretation. *Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs.*, 789 A.2d 1261, 2002 D.C. App. LEXIS 14 (2002).

When mayor's agent's decision regarding application to make improvements in historic district is based on interpretation of statute and regulations the mayor's agent administers, that interpretation will be sustained unless shown to be unreasonable or in contravention of language of legislative history of the Historic District Protection Act. *Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs.*, 789 A.2d 1261, 2002 D.C. App. LEXIS 14 (2002).

The court gives deference to the expertise of an agency, as well as its interpretation of its governing statute, unless that interpretation is unreasonable or inconsistent with the language of the statute. *Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs.*, 789 A.2d 1261, 2002 D.C. App. LEXIS 14 (2002).

Where the meaning of statutory language is not clear on its face, the court will accord considerable weight to its construction by the agency responsible for administering the statute. *Waugh v. D.C. Dep't of Empl. Servs.*, 786 A.2d 595, 2001 D.C. App. LEXIS 252 (2001).

Agency determinations of applicable statutory provisions must reflect the careful legal and policy analysis required in making choices among several competing statutory interpretations, each of which has substantial support, and the record must provide evidence that the agency considered the language, structure, or purpose of the statute when selecting an interpretation. *Waugh v. D.C. Dep't of Empl. Servs.*, 786 A.2d 595, 2001 D.C. App. LEXIS 252 (2001).

An agency's interpretation of its own regulations or of the statute which it administers is generally entitled to great deference from the Court of Appeals. *Upchurch v. D.C. Dep't of Empl. Servs.*, 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

Supreme Court accords considerable deference to an agency's construction of the statute it administers. *Pro-Football, Inc. v. District of Columbia Dep't of Empl. Servs.*, 782 A.2d 735, 2001 D.C. App. LEXIS 217 (2001).

An agency is bound to follow its own regulations. *Nixon v. Quick*, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

An agency's interpretation of its own regulations or of the statute which it administers is generally entitled to great deference from the courts. *Genstar Stone Prods. Co. v. Dep't of Empl. Servs.*, 777 A.2d 270, 2001 D.C. App. LEXIS 150 (2001).

Ordinarily, courts will not attempt to interpret an agency's statute until the agency itself has done so; instead, they will remand to permit the agency to engage in the necessary analysis of the legislation it is charged with carrying out. *Genstar Stone Prods. Co. v. Dep't of Empl. Servs.*, 777 A.2d 270, 2001 D.C. App. LEXIS 150 (2001).

The degree of deference to be accorded to an agency's statutory interpretation is a function of the process by which that interpretative ruling has been arrived at and the degree to which the agency's administrative experience and expertise have contributed to the process. *Genstar Stone Prods. Co. v. Dep't of Empl. Servs.*, 777 A.2d 270, 2001 D.C. App. LEXIS 150 (2001).

An agency's interpretation of a statute it administers is binding on the Court of Appeals unless it conflicts with the plain meaning of the statute or its legislative history; the Court must sustain the agency's interpretation even if a petitioner advances another reasonable interpretation of the statute or if the Court might have been persuaded by the alternate interpretation had the Court been construing the statute in the first instance. *Mushroom Transp. v. District of Columbia Dep't of Empl. Servs.*, 761 A.2d 840, 2000 D.C. App. LEXIS 250 (2000).

Court of Appeals will defer to agency's interpretation of statute and regulations that agency administers unless its interpretation is unreasonable or in contravention of language or legislative history of statute and/or regulations. D.C. Code 1981, § 1-1510(a)(3). *Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n*, 743 A.2d 1231, 2000 D.C. App. LEXIS 9 (2000).

Administrative agencies are bound to follow their own rules and regulations, but failure to do so will not lead to reversal where party has not been prejudiced from deviation from required procedures. D.C. Code 1981, § 1-1510(b). *Robinson v. Smith*, 683 A.2d 481, 1996 D.C. App. LEXIS 212 (1996).

If reviewing court is satisfied that administrative agency has provided reasoned analysis for departing from its own established policy indicating that prior policies and standards are being deliberately changed and not casually ignored, so that agency's path may reasonably be discerned, court will affirm agency's decision. *Watergate E. v. Public Serv. Comm'n*, 665 A.2d 943, 1995 D.C. App. LEXIS 180 (1995).

Agency's interpretation of statute is binding on court unless it conflicts with plain meaning of statute or its legislative history, or is arbitrary, capricious, abuse of discretion, or otherwise not in accordance with the law. D.C. Code 1981, § 1-1510. *Kingsley v. District of Columbia Dep't of Consumer & Regulatory Affairs, Bd. of Accountancy*, 657 A.2d 1141, 1995 D.C. App. LEXIS 91 (1995).

Agency's interpretation of its own regulations or of statute which it administers is generally entitled to great deference from the Court of Appeals; however, when agency's decision is inconsistent with applicable statute, Court owes agency far less deference, if any deference at all. *Columbia Realty Venture v. District of Columbia Rental Housing Com.*, 590 A.2d 1043, 1991 D.C. App. LEXIS 106 (1991).

Court of Appeals will defer to an administrative agency's interpretation of a statute with whose enforcement it is charged, so long as that interpretation is reasonable and is not inconsistent with the statute itself. *Hager v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 475 A.2d 367, 1984 D.C. App. LEXIS 385 (1984).

Court's review of an agency's application of its regulations is governed by standard of reasonableness; when an agency attempts to apply its own regulations, court cannot substitute its judgment if agency's application is reasonable. *Dankman v. District of Columbia Bd. of Elections & Ethics*, 443 A.2d 507, 1981 D.C. App. LEXIS 418 (1981).

Unless plainly erroneous or inconsistent with regulation, deference is properly accorded agency's interpretation of administrative regulation it enforces. *Barber v. District of Columbia Dep't of Human Resources*, 361 A.2d 194, 1976 D.C. App. LEXIS 346 (1976).

When Court of Appeals reviews zoning board's construction of regulations adopted by zoning commission, board's interpretation is controlling, unless it is plainly erroneous or inconsistent with regulation. D.C. Code §§ 1-1501 et seq., 1-1510. *Dietrich v. District of Columbia Board of Zoning Adjustment*, 320 A.2d 282, 1974 D.C. App. LEXIS 217 (1974).

Civil rights.

District of Columbia Administrative Procedure Act did not bar landlords' attempt to bring section 1983 cause of action in federal court alleging that District of Columbia agency responsible for administering local rent control laws intentionally deprived them of due process in carrying out adjudicatory functions and, therefore, District of Columbia courts did not have exclusive jurisdiction over landlords' case. D.C. Code 1981, § 1-1510; 42 U.S.C. § 1983. *District Properties Associates v. District of Columbia*, 743 F.2d 21, 1984 U.S. App. LEXIS 18838 (C.A.D.C. 1984).

Conclusion by District of Columbia Office of Human Rights as investigative body that there was no probable cause of discharge in retaliation for rights protected by Human Rights Act did not collaterally estop discharged employee from challenging discharge in § 1981 and civil rights conspiracy claims; proceedings before Office gave inadequate opportunity to litigate factual issues; and Office's finding of no juris-

diction threw status of earlier action into uncertain light. 42 U.S.C. §§ 1981, 1985(3); D.C. Code 1981, §§ 1-1501 to 1-1510, 1-2501 et seq., 1-2525, 1-2544, 1-2545, 1-2550 to 1-2553; § 1-1511 (repealed). *Alder v. Columbia Historical Soc.*, 690 F. Supp. 9, 1988 U.S. Dist. LEXIS 9252 (1988).

Ward, who had previously been removed from her parents' home following allegations of abuse and neglect, was given the opportunity to be heard in a meaningful manner, on voluntary applications by Child and Family Services Agency (CFSA) seeking admission of ward into a residential habilitation facility as a mentally retarded person under the Mentally Retarded Citizens Constitutional Rights and Dignity Act, where ward was able to submit any and all documentation that she wanted DDS to consider, DDS considered everything put forth in support of the applications, and DDS letters clearly articulated its reasons for denying services. *In re A.T.*, 10 A.3d 127, 2010 D.C. App. LEXIS 728 (2010).

Ward, who had previously been removed from her parents' home following allegations of abuse and neglect, was not entitled to a formal, trial-type, contested-case hearing before the Department on Disability Services (DDS) on voluntary applications submitted by Child and Family Services Agency (CFSA) seeking admission of ward into a residential facility as a mentally retarded person under the Mentally Retarded Citizens Constitutional Rights and Dignity Act; ward was instead entitled to given the opportunity to be heard in a meaningful manner. *In re A.T.*, 10 A.3d 127, 2010 D.C. App. LEXIS 728 (2010).

Judicial review of a decision of the Commission on Human Rights, regarding a claim of employment discrimination in violation of the District of Columbia Human Rights Act (DCHRA), is limited to determining whether the order was in accordance with the law and supported by substantial evidence in the record. *Ottenberg's Bakers, Inc. v. D.C. Comm'n on Human Rights*, 917 A.2d 1094, 2007 D.C. App. LEXIS 98 (2007).

Determination of Office of Human Rights that there was no probable cause to believe that Human Rights Act had been violated was subject to judicial review. D.C. Code 1981, §§ 1-1510(a), 1-2554. *Simpson v. District of Columbia Office of Human Rights*, 597 A.2d 392, 1991 D.C. App. LEXIS 266 (1991).

Even though neither employee nor employer moved for hearing on issue of whether enforceable settlement agreement existed in sex discrimination claim before Commission on Human Rights, where resolution of factual discrepancies inherent in settlement documents and other evidence turned on determination of each party's credibility, hearing was necessary so that sworn testimony, cross-exam-

ination, and demeanor evidence could provide sufficient basis for determining whether enforceable settlement agreement existed. D.C. Code 1981, §§ 1-1509(b), 1-1510(a)(3)(A). *Garzon v. District of Columbia Comm'n Human Rights*, 578 A.2d 1134, 1990 D.C. App. LEXIS 175 (1990).

Although Human Rights Commission, in reviewing hearing examiner's proposed decision on claim of racial and sexual discrimination in employment in violation of District of Columbia Human Rights Act, was not limited to determining whether hearing examiner's findings were supported by substantial evidence, Commission decision contrary to hearing examiner's proposed decision had to be remanded to allow Commission to explain its departure from hearing examiner's findings, especially from those relating to witness credibility. D.C. Code 1981, §§ 1-1510(a)(3)(E), 1-2551 to 1-2554. *Harris v. District of Columbia Com. on Human Rights*, 562 A.2d 625, 1989 D.C. App. LEXIS 139 (1989).

Human Rights Commission's scope of review of hearing examiner's proposed decision on claim of racial discrimination in employment in violation of District of Columbia Human Rights Act was not limited to determination of whether hearing examiner's findings were supported by substantial evidence. D.C. Code 1981, §§ 1-1510(a)(3)(E), 1-2551 to 1-2554. *Harris v. District of Columbia Com. on Human Rights*, 562 A.2d 625, 1989 D.C. App. LEXIS 139 (1989).

Finding by District of Columbia Commission on Human Rights in employment discrimination action by discharged black former nursing home assistants, that white assistant slapped patients and called them names, was unsupported by substantial evidence; finding was based on hearsay testimony in investigator's report which was inconsistent with hearing testimony of investigator and complainants. D.C. Code 1981, §§ 1-1510(a)(3)(E), 1-2501 et seq. *Wisconsin Ave. Nursing Home v. District of Columbia Com. on Human Rights*, 527 A.2d 282, 1987 D.C. App. LEXIS 367 (1987).

Court of Appeals must accept the Commission on Human Rights' findings of fact if they are supported by substantial evidence and the Court of Appeals must decide all relevant questions of law. D.C. Code 1981, § 1-1510(a)(1), (a)(3)(E). *RAP, Inc. v. District of Columbia Com. on Human Rights*, 485 A.2d 173, 1984 D.C. App. LEXIS 560 (1984).

Title VII of the Civil Rights Act of 1964 does not provide a remedy for employee's discrimination claims based on personal appearance and family responsibility, so as to bar judicial review of city administrator's decision affirming dismissal of employee's complaint by the Director of Equal Employment Opportunity. D.C. Code 1981, §§ 1-1502(8)(A), 1-1510(a),

1-2553(a)(1)(D); Civil Rights Act of 1964, §§ 701 et seq., 703(a)(1), 704(a), as amended, 42 U.S.C. §§ 2000e-1 et seq., 2000e-2(a)(1), 2000e-3(a). *Lamont v. Rogers*, 479 A.2d 1274, 1984 D.C. App. LEXIS 459 (1984).

Provision for judicial review in the human rights law does not expand scope of Court of Appeals jurisdiction to review administrative proceedings beyond that conferred by the Administrative Procedure Act, in that language of provision in the human rights law closely tracks language of the Administrative Procedure Act. D.C. Code 1981, §§ 1-1501 to 1-1510, 1-2554. *Lamont v. Rogers*, 479 A.2d 1274, 1984 D.C. App. LEXIS 459 (1984).

Employee's sexual discrimination and retaliation claims were subject to a subsequent de novo trial under Title VII of the Civil Rights Act of 1964, and thus, did not constitute a "contested case" entitling employee to judicial review of decision of the city administrator affirming a hearing officer's dismissal of her complaints for alleged failure to show probable cause to believe that a violation of the human rights law had occurred. D.C. Code 1981, §§ 1-1502(8), 1-1510(a); Civil Rights Act of 1964, §§ 703(a)(1), 704(a), 706(a), as amended, 42 U.S.C. §§ 2000e-2(a)(1), 2000e-3(a), 2000e-5(b). *Lamont v. Rogers*, 479 A.2d 1274, 1984 D.C. App. LEXIS 459 (1984).

Court of Appeals had no jurisdiction over employee's discrimination claims based on personal appearance and family responsibility, despite fact that such claims were not a "contested case," within meaning of statute providing for judicial review of a decision of the mayor or an agency. D.C. Code 1981, §§ 1-1502(8)(A), 1-1510(a), 1-2553(a)(1)(D). *Lamont v. Rogers*, 479 A.2d 1274, 1984 D.C. App. LEXIS 459 (1984).

Since no trial-type hearing was required as respects employee's claims of retaliation and that she had been discriminated against on basis of sex, personal appearance, and family responsibilities, either by organic act or constitutional right, employee's claim did not constitute a "contested case," for purposes of judicial review of city administrator's decision affirming dismissal of her complaint by the Director of Equal Employment Opportunity. D.C. Code 1981, §§ 1-1502(8), 1-1510(a). *Lamont v. Rogers*, 479 A.2d 1274, 1984 D.C. App. LEXIS 459 (1984).

Absent any claim by employee for compensatory damages, promotion and back pay, purported disparity in available remedies under the human rights law and Title VII of the Civil Rights Act of 1964 made no difference to a determination that employee's sexual discrimination and retaliation claims were cognizable under Title VII and that thus, employee's claims did not constitute a "contested case," for purposes of judicial review of decision of the

city administrator affirming dismissal of employee's claims by the Director of Equal Employment Opportunity. D.C. Code 1981, §§ 1-1502(8)(A), 1-1510(a), 1-2553(a)(1)(D); Civil Rights Act of 1964, §§ 701 et seq., 703(a)(1), 704(a), as amended, 42 U.S.C. §§ 2000e-1 et seq., 2000e-2(a)(1), 2000e-3(a). *Lamont v. Rogers*, 479 A.2d 1274, 1984 D.C. App. LEXIS 459 (1984).

The review function of the Court of Appeals in a discriminatory employment case is to determine whether the findings of the Commission on Human Rights are supported by substantial evidence in the record considered as a whole and whether its conclusions of law flow rationally from those findings. D.C. Code 1981, §§ 1-1510, 1-1510(a)(3)(E). *Greater Washington Business Center v. D.C. Com. on Human Rights*, 454 A.2d 1333, 1982 D.C. App. LEXIS 514 (1982).

Primary power is vested in the Commission on Human Rights to make findings of fact in a discriminatory employment case, since its examiner, having heard the evidence and seen the witnesses, is in the best position to make those fact-findings. D.C. Code 1981, §§ 1-1510, 1-1510(a)(3)(E). *Greater Washington Business Center v. D.C. Com. on Human Rights*, 454 A.2d 1333, 1982 D.C. App. LEXIS 514 (1982).

Findings of fact of the Commission on Human Rights are binding on the Court of Appeals in a discriminatory employment case unless they are unsupported by substantial evidence in the record. D.C. Code 1981, §§ 1-1510, 1-1510(a)(3)(E). *Greater Washington Business Center v. D.C. Com. on Human Rights*, 454 A.2d 1333, 1982 D.C. App. LEXIS 514 (1982).

Substantial evidence supporting findings of fact of the Commission on Human Rights in a discriminatory employment case means more than a mere scintilla and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. D.C. Code 1981, §§ 1-1510, 1-1510(a)(3)(E). *Greater Washington Business Center v. D.C. Com. on Human Rights*, 454 A.2d 1333, 1982 D.C. App. LEXIS 514 (1982).

In determining whether complaint should be dismissed because of the failure of Office of Human Rights to serve timely complaint, court must balance interests of public and individual complainant in allowing Office to proceed to investigate alleged employment discrimination and prejudice employer suffers by being forced to respond to untimely complaint; same approach should be used to determine whether Office's actions in investigating alleged discrimination must be terminated, under traditional equitable principles, for failure to act promptly or to make a finding of probable cause within 120 days as required by regulation. D.C. Code § 1-1510. *JBG Properties, Inc. v. District of*

Columbia Office of Human Rights, 364 A.2d 1183, 1976 D.C. App. LEXIS 391 (1976).

Failure of the Office of Human Rights to serve copy of complaint on employer within 15 days after filing of complaint or to commence investigation within 120 days of filing of complaint did not require dismissal of complaint or termination of Office's investigation, especially in light of facts that charges against employer were filed only 12 days late and that delay in investigating complaint was due in large part to Office's efforts to conciliate the matter without taking official action. D.C. Code § 1-1510. *JBG Properties, Inc. v. District of Columbia Office of Human Rights*, 364 A.2d 1183, 1976 D.C. App. LEXIS 391 (1976).

Requirements of regulation providing that the Office of Human Rights shall serve, within 15 days of filing of complaint charging employment discrimination, a copy thereof on employer and make prompt investigation and, within 120 days after service of complaint, determine if it has jurisdiction and if there is probable cause to believe that employer has engaged in unlawful discriminatory practices are directory rather than mandatory so that Office's failure to adhere strictly to time provisions does not deprive it of jurisdiction to continue its investigation. D.C. Code § 1-1510. *JBG Properties, Inc. v. District of Columbia Office of Human Rights*, 364 A.2d 1183, 1976 D.C. App. LEXIS 391 (1976).

Construction with other statutes.

When reviewing an agency interpretation of a statute it administers, the Court of Appeals ordinarily gives considerable deference to such an interpretation as well as to the agency's own regulations and decisions. *Majerle Mgmt. v. D.C. Rental Hous. Comm'n*, 866 A.2d 41, 2004 D.C. App. LEXIS 698 (2004).

District of Columbia Council has authority to, and intended to create an exception to contested case review by the Court of Appeals under the District of Columbia Administrative Procedure Act for certain cases adjudicated under the Traffic Adjudication Act; therefore, even though the adjudicative nature of such proceedings was functionally consistent with the general definition of a contested case, there was no conflict between the Traffic Adjudication Act and the District of Columbia Administrative Procedure Act. D.C. Code 1973, § 40-603(i); D.C. Code 1978 Supp. §§ 1-121 et seq., 1-147(a)(1), 1-1501 et seq.; D.C. Code 1980 Supp. § 4-1101 et seq. *District of Columbia v. Sullivan*, 436 A.2d 364, 1981 D.C. App. LEXIS 377 (1981).

Contested cases.

— Adjudicatory proceedings, contested cases.

Court of Appeals had jurisdiction to consider a petition to review decision of the District of

Columbia Housing Authority (DCHA) terminating recipient's eligibility for housing subsidies under the Tenant Assistance Program (TAP), based on allegation that she fraudulently under-reported her income in order to obtain more assistance; Court had jurisdiction to review contested cases, and DCHA's decision was made in a trial-type hearing required by the Constitution. *Powell v. D.C. Hous. Auth.*, 818 A.2d 188, 2003 D.C. App. LEXIS 132 (2003).

To meet jurisdictional requirement that Court of Appeals review only decisions and orders of District of Columbia agencies rendered in "contested cases," hearings must be adjudicatory rather than legislative in nature. D.C. Code 1981, § 11-722. *United States v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 995, 1994 D.C. App. LEXIS 50 (1994).

Absent explicit or implicit statutory requirement of any hearing at all, fact that proceeding may involve primarily adjudicative facts will not make it contested case for purposes of permitting direct review under Administrative Procedure Act (APA). D.C. Code 1981, § 11-722. *United States v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 995, 1994 D.C. App. LEXIS 50 (1994).

When hearing is provided for, but type of hearing is in doubt, analysis of nature of issues as adjudicatory or rulemaking may be determinative of whether decision arose out of contested case so as to permit judicial review under Administrative Procedure Act (APA). D.C. Code 1981, § 11-722. *United States v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 995, 1994 D.C. App. LEXIS 50 (1994).

Direct review of administrative agency orders is limited, in absence of statutory provision permitting review, to contested cases, i.e., where agency proceeding determines legal rights, duties or privileges of specific parties, and where proceeding below was trial-type hearing required by law. D.C. Code 1981, § 1-1502(8). *Communication Workers of America, Local 2336 v. District of Columbia Taxicab Com.*, 542 A.2d 1221, 1988 D.C. App. LEXIS 130 (1988).

District of Columbia Historic Preservation Review Board proceeding to determine whether landowner's properties should be designated as historic landmarks was not "contested case," and thus, Court of Appeals had no jurisdiction to review Board's order designating properties as landmarks; no administrative hearing on matter was either statutorily or constitutionally compelled. D.C. Code 1981, §§ 1-1502(8), 1-1510(a). *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

In order for court to have jurisdiction to review agency actions, case must be one that

requires trial-type hearing before agency either by statute or by constitutional right. D.C. Code 1981, §§ 1-1502(8), 1-1510, 11-722. *Rones v. District of Columbia Dep't of Housing & Community Dev.*, 500 A.2d 998, 1985 D.C. App. LEXIS 574 (1985).

Under the Administrative Procedure Act, an administrative proceeding is a "contested case," for purposes of judicial review, only if a trial-type hearing is implicitly required by either the organic act or constitutional right. D.C. Code 1981, §§ 1-1502(8), 1-1510(a). *Lamont v. Rogers*, 479 A.2d 1274, 1984 D.C. App. LEXIS 459 (1984).

Section of District of Columbia Administrative Procedure Act governing judicial review appropriately limits review by the Court of Appeals to cases in which there has been an evidentiary hearing, meeting the "contested case" requirements, or at least an effort to obtain such a hearing which the agency erroneously denied. D.C. Code 1981, § 1-1510. *Auger v. D.C. Bd. of Appeals & Review*, 477 A.2d 196, 1984 D.C. App. LEXIS 370 (1984).

Under the District of Columbia Administrative Procedure Act, "contested case" status generally depends on whether agency proceeding is adjudicatory in nature. D.C. Code §§ 1-1501 et seq., 1-1502(8), (8)(B), 1-1509, 1-1509(a, c, e), 1-1510. *Wells v. District of Columbia Board of Education*, 386 A.2d 703, 1978 D.C. App. LEXIS 380 (1978).

An administrative proceeding is primarily adjudicatory and therefore governed by "contested case" procedural requirements if it is concerned basically with weighing particular information and arriving at a decision directed at the rights of specific parties; on the other hand, an administrative proceeding is not subject to "contested case" procedural requirements if the administrative body is acting in a legislative capacity, making policy decisions directed toward general public. D.C. Code §§ 1-1502(8), 1-1510. *Chevy Chase Citizens Asso. v. District of Columbia Council*, 327 A.2d 310, 1974 D.C. App. LEXIS 291 (1974).

Where a hearing resolves fact question of specific applicability, the Zoning Commission performs primarily an adjudicative function, and the proceeding falls within the contested case provision of the Administrative Procedure Act. D.C. Code §§ 1-1501 to 1-1510. *Citizens Asso. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

— Bid protests, contested cases.

Bid protest is not "contested case," within meaning of District of Columbia Administrative Procedure Act (DCAPA) allowing District of Columbia Court of Appeals to hear direct appeal of agency decision only in contested case, and thus, disappointed bidder seeking relief from decision on bid protest by Contract Ap-

peals Board (CAB) must resort in first instance to superior court. D.C. Code 1981, §§ 1-1189.3, 1-1502(8), 1-1510(a); 18 U.S.C. §§ 1651, 1651(a). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

— **In general.**

Claims by owner of apartment building in petition that it filed with the Water and Sewer Authority (WASA), that it was not liable for tenants' unpaid water bills and that WASA could not file liens on the building for such bills, did not arise from a "contested case," and thus owner was not required by the Administrative Procedure Act (APA) to appeal adverse decision by WASA's hearing officer directly to the Court of Appeals, where owner was not challenging the particulars of water bills, and owner's petition before the WASA focused on questions of law and policy rather than adjudicative facts. *Euclid St., LLC v. D.C. Water & Sewer Auth.*, 41 A.3d 453, 2012 D.C. App. LEXIS 142 (2012).

When Congress legislates that certain types of agency actions shall not have contested case status, those cases are not proper subject of direct appellate jurisdiction. D.C. Code 1981, § 11-722. *United States v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 995, 1994 D.C. App. LEXIS 50 (1994).

Judicial review available in accordance with statute providing for judicial review of order or decision of agency in contested case applied only to orders or decisions in contested cases. D.C. Code 1981, § 1-1510. *Siler v. District of Columbia Dep't of Employment Services*, 525 A.2d 620, 1987 D.C. App. LEXIS 354 (1987).

Where neither language, structure, nor history of statute shows intent to impose requirement of any kind of hearing before administrative action, fact that proceeding may involve primarily adjudicative fact will not make it "contested case" subject to judicial review. D.C. Code 1981, §§ 1-1502(8), 1-1510(a). *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

Court of Appeals' scope of review of contested cases under District of Columbia Administrative Procedure Act prohibits substitution of Court's judgment for that of agency. D.C. Code 1981, §§ 1-1501 et seq., 1-1510. *Kegley v. District of Columbia*, 440 A.2d 1013, 1982 D.C. App. LEXIS 294 (1982).

Phrase "after a hearing" as used in statute defining a "contested case" as meaning a proceeding in which the legal rights and privileges of specific parties are required to be determined after a hearing means after a trial-type hearing where such is implicitly required by either the organic act or constitutional right. D.C. Code §§ 1-1502(8), 1-1510. *Chevy Chase Citizens*

Asso. v. District of Columbia Council, 327 A.2d 310, 1974 D.C. App. LEXIS 291 (1974).

— **Jurisdiction, contested cases.**

Court of Appeals had jurisdiction to consider a petition to review decision of the District of Columbia Housing Authority (DCHA) terminating recipient's eligibility for housing subsidies under the Tenant Assistance Program (TAP), based on allegation that she fraudulently under-reported her income in order to obtain more assistance; Court had jurisdiction to review contested cases, and DCHA's decision was made in a trial-type hearing required by the Constitution. *Powell v. D.C. Hous. Auth.*, 818 A.2d 188, 2003 D.C. App. LEXIS 132 (2003).

Court of Appeals' jurisdiction to hear a petition to review a decision by an administrative agency is limited to contested cases. *Powell v. D.C. Hous. Auth.*, 818 A.2d 188, 2003 D.C. App. LEXIS 132 (2003).

Applicant's appeal to Board of Appeals and Review (BAR) pursuant to construction regulations, to challenge denial of a demolition permit to raze building that was designated a historic landmark, was a trial-type hearing required "by law" within meaning of the definition of a "contested case" set forth in the Administrative Procedure Act (APA), as required to give the Court of Appeals jurisdiction to directly review BAR's decision. *J.C. & Assocs. v. State Bd. of Appeals & Review*, 778 A.2d 296, 2001 D.C. App. LEXIS 164 (2001).

Proceedings before Board of Appeals and Review (BAR), in which applicant challenged denial of a demolition permit to raze building that was designated a historic landmark, did not "rest solely on inspections," and thus, was not excluded from Administrative Procedure Act's (APA) definition of "contested case," and direct review by the Court of Appeals was not precluded. *J.C. & Assocs. v. State Bd. of Appeals & Review*, 778 A.2d 296, 2001 D.C. App. LEXIS 164 (2001).

Administrative Procedure Act contemplates exclusive jurisdiction in the Court of Appeals over review of administrative proceedings involving contested cases, precluding concurrent jurisdiction in the Superior Court. D.C. Code 1981, § 1-1510. *Fair Care Found. v. District of Columbia Dep't of Ins. & Sec. Regulation*, 716 A.2d 987, 1998 D.C. App. LEXIS 157 (1998).

If analysis reveals that party who claimed that she was erroneously denied contested case hearing by administrative agency was not entitled to contested case hearing, Court of Appeals must dismiss appeal of agency's order for lack of jurisdiction. D.C. Code 1981, § 1-1501 et seq. *Timus v. District of Columbia Dep't of Human Rights*, 633 A.2d 751, 1993 D.C. App. LEXIS 273 (1993).

Ordinarily, Court of Appeals has direct review jurisdiction not only when contested case hearing before administrative agency has taken place, but also when party has made effort to obtain contested case hearing which agency erroneously denied. D.C. Code 1981, § 1-1501 et seq. *Timus v. District of Columbia Dep't of Human Rights*, 633 A.2d 751, 1993 D.C. App. LEXIS 273 (1993).

Court of Appeals has jurisdiction to review order or decision of mayor or agency only in contested case. D.C. Code 1981, §§ 1-1510(a), 11-722. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 1988 D.C. App. LEXIS 208 (1988).

Award of contract for an on-line lottery system was not a "contested case" under District of Columbia code provision, and direct appeal from decision of the Lottery and Charitable Control Board awarding the contract would not lie in the Court of Appeals; hence, the superior court properly determined that it had jurisdiction to review the Board's decision. D.C. Code 1981, §§ 1-1502(8), 1-1509, 1-1510, 2-2536. *Network Technical Services, Inc. v. D.C. Data Co.*, 464 A.2d 133, 1983 D.C. App. LEXIS 440 (1983).

Under the section of the District of Columbia Code which authorizes the District of Columbia Court of Appeals to review agency action in accordance with the District of Columbia Administrative Procedure Act, the Court of Appeals has jurisdiction to review directly only agency action that is taken in a contested case. D.C. Code §§ 1-1502(8), 1-1510, 11-722. *Capitol Hill Restoration Soc. v. Moore*, 410 A.2d 184, 1979 D.C. App. LEXIS 531 (1979).

Court is empowered only to review directly agency decisions or actions entered in "contested cases." D.C. Code §§ 1-1501 et seq., 1-1502(8), (8)(B). *Wells v. District of Columbia Board of Education*, 386 A.2d 703, 1978 D.C. App. LEXIS 380 (1978).

Exclusion of employee "selection or tenure" matters from definition of a "contested case" reviewable by courts encompasses personnel decisions transferring employees within agency. D.C. Code §§ 1-1501 et seq., 1-1502(8), (8)(B). *Wells v. District of Columbia Board of Education*, 386 A.2d 703, 1978 D.C. App. LEXIS 380 (1978).

District of Columbia Court of Appeals is able to review directly only agency decisions or orders entered in contested cases. D.C. Code § 1-1501 et seq. *O'Neill v. District of Columbia Office of Human Rights*, 355 A.2d 805, 1976 D.C. App. LEXIS 521 (1976).

A proceeding before District of Columbia Council may be a "contested case" within District of Columbia Administrative Procedure Act and, if it is, an order resulting therefrom is directly reviewable in Court of Appeals. D.C. Code §§ 1-1501 to 1-1510, 7-123, 7-124, 7-401,

7-405, 11-722. *Chevy Chase Citizens Asso. v. District of Columbia Council*, 307 A.2d 740, 1973 D.C. App. LEXIS 413 (1973), vacated by 309 A.2d 97 (D.C. 1973).

— Quasi-legislative or quasi-judicial determinations, contested cases.

Foreign university's proceeding before the Education Licensure Commission, which resulted in a renewal of its educational license, was not a "contested case" within the meaning of the District of Columbia Administrative Procedure Act (DCAPA), and thus, the Superior Court, not the Court of Appeals, had jurisdiction to hear an action for declaratory judgment brought by another university concerning the renewal decision, assuming such action fell within the purview of the DCAPA; renewal decision was made at meetings that were legislative in nature, and there was no entitlement to a trial-type hearing on the decision. *Am. Univ. in Dubai v. D.C. Educ. Licensure Comm'n*, 930 A.2d 200, 2007 D.C. App. LEXIS 483 (2007).

The principal manifestation of a "contested case," within meaning of review provisions of Administrative Procedure Act of District of Columbia, is its character as a quasi-judicial process based upon particular facts and information, and immediately affecting interests of specific parties in proceeding. D.C. Code §§ 1-1501 et seq., 1-1502(8). *Debruhl v. District of Columbia Hackers' License Appeal Board*, 384 A.2d 421, 1978 D.C. App. LEXIS 440 (1978).

Decision of District of Columbia Council, pursuant to the Street Readjustment Act, to close portion of street and, once closed, to authorize the surveyor to convey title to the abutting landowners for development purposes did not constitute a "contested case" within meaning of the Administrative Procedure Act; in determining whether it should close the street the Council was exercising legislative discretion based on primarily legislative facts; also, Council's decision regarding compensation, though primarily adjudicatory, did not fall within the "contested case" definition since it was subject to trial de novo in Superior Court. D.C. Code §§ 1-1502(8), 1-1510, 7-401, 7-404, 7-405. *Chevy Chase Citizens Asso. v. District of Columbia Council*, 327 A.2d 310, 1974 D.C. App. LEXIS 291 (1974).

Where a proceeding by a quasi-legislative body is concerned primarily with the immediate rights, duties, or privileges of specific parties instead of with general policy of future applicability, such proceeding falls within the "contested case" provisions of the Administrative Procedure Act. D.C. Code §§ 1-1502(8), 1-1510. *Chevy Chase Citizens Asso. v. District of Columbia Council*, 327 A.2d 310, 1974 D.C. App. LEXIS 291 (1974).

The principal manifestation of a “contested case,” within meaning of review provisions of Administrative Procedure Act of District of Columbia, is its character as a quasi-judicial process based on particular facts and information, and immediately affecting the interests of specific parties in the proceeding. D.C. Code §§ 1-1501 to 1-1510. *Citizens Asso. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

When a proceeding before an agency assumes primarily a quasi-judicial nature, the proceeding constitutes a contested case within meaning of review provisions of the District of Columbia Administrative Procedure Act. D.C. Code §§ 1-1501 to 1-1510. *Citizens Asso. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

Where the Zoning Commission sits in a legislative capacity, making a policy decision directed toward the general public, its proceeding is without the contested case provision of the Administrative Procedure Act, as regards judicial review. D.C. Code §§ 1-1501 to 1-1510. *Citizens Asso. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

A proceeding before the Zoning Commission on amendments relating to an area of a city lacks the specificity of subject matter and result, indicative of an adjudicatory proceeding; the proceeding is a quasi-legislative hearing conducted for the purpose of obtaining facts and information, and views of the public pertinent to the resolution of a policy decision, and thus, is not a contested case within the judicial review provisions of the Administrative Procedure Act. D.C. Code §§ 1-1501 to 1-1510. *Citizens Asso. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

Contract appeals board.

Proceeding to review decision of Contract Appeals Board (CAB) in bid protest proceeding was not “contested case” within jurisdiction of Court of Appeals, although CAB rules allowed for trial type hearing in bid protest case; CAB had not held such a hearing, and regulations did not require such hearings, but made them discretionary with CAB. D.C. Code 1981, §§ 1-1502(8), 1-1510(a); D.C.Mun.Reg. Title 27, § 311.1. *Francis v. Recycling Solutions*, 695 A.2d 63, 1997 D.C. App. LEXIS 138 (1997).

Mere possibility of holding discretionary hearing on bid protest, particularly in case where Contract Appeals Board (CAB) has decided not to hold one, does not meet “required by law” element of “trial type hearing” criterion for contesting case. D.C. Code 1981, §§ 1-1502(8), 1-1510(a); D.C.Mun.Reg. Title 27, § 311.1. *Francis v. Recycling Solutions*, 695 A.2d 63, 1997 D.C. App. LEXIS 138 (1997).

Contract Appeals Board’s (CAB) adjudication of facts in bid protest case did not satisfy “trial type hearing” requirement for contested case. D.C. Code 1981, §§ 1-1502(8), 1-1510(a); D.C.Mun.Reg. Title 27, § 311.1. *Francis v. Recycling Solutions*, 695 A.2d 63, 1997 D.C. App. LEXIS 138 (1997).

Where result reached by Contract Appeals Board for the District of Columbia does not satisfy the parties concerned they are not entitled to direct review under the Administrative Procedure Act but they are left with the traditional remedies at law and any questions of contractual rights should be resolved in a suit on the contract. *Gunnell Constr. Co. v. Contract Appeals Board*, 282 A.2d 556, 1971 D.C. App. LEXIS 219 (1971).

Discretion of administrative agency.

An agency decision must not be disturbed unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *Orius Telcoms., Inc. v. D.C. Dep’t of Empl. Servs.*, 857 A.2d 1061, 2004 D.C. App. LEXIS 417 (2004).

Consolidation, scope of the inquiry, and similar questions are housekeeping details addressed to the discretion of the agency and, due process or statutory considerations aside, are no concern of the courts. *District of Columbia v. PSC of D.C.*, 802 A.2d 373, 2002 D.C. App. LEXIS 376 (2002).

An administrative order can be sustained only upon the basis relied upon by the agency, and Court of Appeals cannot substitute its judgment for that of the agency or make findings on issues that the agency did not address. *Pro-Football, Inc. v. District of Columbia Dep’t of Empl. Servs.*, 782 A.2d 735, 2001 D.C. App. LEXIS 217 (2001).

The determination whether and when to institute enforcement proceedings against a specific individual is a core executive responsibility which may reasonably be viewed as having been committed to agency discretion so as to preclude substantive judicial review. *J.C. & Assocs. v. State Bd. of Appeals & Review*, 778 A.2d 296, 2001 D.C. App. LEXIS 164 (2001).

Under Court of Appeals’ limited review of agency decisions, Court must affirm unless it concludes that agency’s ruling was arbitrary, capricious, abuse of discretion, or otherwise not in accordance with law. D.C. Code 1981, § 1-1510(a)(3). *Olson v. District of Columbia Dep’t of Empl. Servs.*, 736 A.2d 1032, 1999 D.C. App. LEXIS 202 (1999).

When reviewing agency decisions, appellate court must determine whether substantial evidence exists in the record to support the decision, or whether the decision is arbitrary, capricious, or an abuse of discretion. D.C. Code 1981, §§ 1-1509(e), 1-1510(a)(3)(A, E). *Fort Chaplin Park Assocs. v. District of Columbia Rental*

Hous. Comm'n, 649 A.2d 1076, 1994 D.C. App. LEXIS 208 (1994).

Courts defer to administrative agency's judgment because legislature has delegated its own power of decision to the agency, not to the courts, and thus, in order not to substitute its judgment for the agency's, court utilizes a highly structured mode of review that determines whether agency's result is within its range of permissible alternatives and tests the solidity of the foundation from which agency draws that decision; in contrast, when appellate court reviews trial court's exercise of discretion it can be either more intrusive or more restrained, as the occasion requires, because decision is committed initially for judicial, not administrative, action. D.C. Code § 1-1510(3)(E). *Johnson v. United States*, 398 A.2d 354, 1979 D.C. App. LEXIS 329 (1979).

Disposition of appeal.

Substantial evidence did not support Office of Employee Appeals' (OEA) decision to dismiss employee's petition for appeal, seeking review of his termination through alleged reduction in force, and not to allow discovery and hold hearing upon employee's detailed allegations of improper employment actions; employee alleged that employing agency first transferred him, after number of years in career service position, to the excepted service and then transferred him out of excepted service and back to newly created career service supervisory position with no one to supervise, and then, a few weeks later, abolished the very position it had specifically created for him. *Levitt v. D.C. Office of Empl. Appeals*, 869 A.2d 364, 2005 D.C. App. LEXIS 50 (2005).

Where an agency fails to address an issue presented to it, reviewing court generally remands the case to the agency for a determination. *Morrison v. District of Columbia*, 834 A.2d 890, 2003 D.C. App. LEXIS 635 (2003).

The preferred remedy for administrative delay is an order compelling agency action, not a reversal of the eventual agency decision. *Udebiuwa v. D.C. Bd. of Med.*, 818 A.2d 160, 2003 D.C. App. LEXIS 139 (2003).

Failure of the Office of Employee Appeals (OEA) to make findings on material, contested issues of fact required remand to OEA to make specific factual findings regarding whether, and to what extent, employee was incapacitated by her sinus ailments and unable to work at her job with District of Columbia Department of Public Works during her seven week absence without leave. *Murchison v. D.C. Dep't of Pub. Works*, 813 A.2d 203, 2002 D.C. App. LEXIS 736 (2002).

In instances of unwarranted delay in administrative proceedings, proper remedy is court order expediting proceedings, not reversal and remand order by appellate court. D.C. Code

1981, § 1-1510(a)(2). *Harris v. District of Columbia Rental Housing Com.*, 505 A.2d 66, 1986 D.C. App. LEXIS 293 (1986).

A reviewing court need not reverse when an agency has made an unsupported finding if the finding is demonstrably subsidiary and the agency does not purport to rely on the finding; however, remand is necessary if the court is in substantial doubt whether the administrative agency would have made the same ultimate finding with the erroneous findings or inferences removed from the picture. D.C. Code § 1-1510. *Liberty v. Police & Firemen's Retirement & Relief Bd.*, 410 A.2d 191, 1979 D.C. App. LEXIS 533 (1979).

If error is found upon appellate review of administrative decision, case will be remanded to agency out of hand, unless error is determined to be de minimus. D.C. Code § 1-1510(3)(E). *Johnson v. United States*, 398 A.2d 354, 1979 D.C. App. LEXIS 329 (1979).

Due process.

District of Columbia did not violate police officer's procedural due process rights when D.C. officials failed to enforce letter of determination of D.C. Department of Human Rights finding probable cause as to officer's employment discrimination complaint, where officer had avenues of relief open to him in the D.C. Court of Appeals through a writ of mandamus or a proceeding for judicial review based on the District of Columbia Administrative Procedure Act (DCAPA), but he failed to pursue such avenues. *Medina v. District of Columbia*, 517 F.Supp.2d 272, 2007 U.S. Dist. LEXIS 40781 (2007).

Elections and election contests.

Court of Appeals' deference to findings of Board of Elections and Ethics is especially appropriate where decision was based in part on its assessment of credibility of witnesses. D.C. Code 1981, § 1-1510(a)(3)(E). *Allen v. District of Columbia Bd. of Elections & Ethics*, 663 A.2d 489, 1995 D.C. App. LEXIS 158 (1995).

In Court of Appeals' consideration of disposition of Board of Elections and Ethics of closely contested election, scope of review is limited; Court of Appeals must accept Board's findings of fact so long as they are supported by substantial evidence on record as whole. D.C. Code 1981, § 1-1510(a)(3)(E). *Allen v. District of Columbia Bd. of Elections & Ethics*, 663 A.2d 489, 1995 D.C. App. LEXIS 158 (1995).

Court of Appeals lacked jurisdiction to hear direct appeal from decision of Board of Elections and Ethics denying petitioner's challenge to qualifications of prospective candidate for council seat on residency grounds filed before Board finally determined candidate's eligibility. D.C. Code 1981, §§ 1-225, 1-1502(8), 1-1510(a), 11-722. *Lawrence v. District of Columbia Bd. of*

Elections & Ethics, 611 A.2d 529, 1992 D.C. App. LEXIS 197 (1992).

Challenge to decision of Board of Elections and Ethics to accept signatures supporting public initiative whose petition addresses did not match Board's voting roles amounted to challenge to such signatures, which had to be subject of administrative challenge within statutory ten-day period following posting for judicial review to be available; challenge was not within exception to procedural requirements and was not governed by review procedures set forth in Administrative Procedure Act. D.C. Code 1981, §§ 1-1320(i), (k)(1), (o), 1-1510(a). *Davies v. District of Columbia Bd. of Elections & Ethics*, 596 A.2d 992, 1991 D.C. App. LEXIS 265 (1991).

Burden placed on candidates to learn when certification of election will occur, for purposes of seeking judicial review, was consistent with due process notice requirements. D.C. Code 1981, §§ 1-257, 1-258, 1-260(a), 1-268(a, b), 1-1315(b); U.S. Const. Amend. 5. *White v. District of Columbia Bd. of Elections & Ethics*, 537 A.2d 1133, 1988 D.C. App. LEXIS 45 (1988).

Exhaustion of administrative remedies.

Any plaintiff, not just employees of District of Columbia, must exhaust administrative procedures promulgated by mayor before bringing suit under District of Columbia Human Rights Act (DCHRA) against District, its agencies, or officials. *Armstrong v. D.C. Pub. Library*, 154 F.Supp.2d 67, 2001 U.S. Dist. LEXIS 12585 (2001).

Basic policy of the law is that administrative remedies should be exhausted so long as the agency clearly has jurisdiction over the case and so long as resort to the agency is not obviously futile. *Artis-Bey v. District of Columbia*, 884 A.2d 626, 2005 D.C. App. LEXIS 512 (2005).

So long as the appellant or some other party has put an objection on the record, the obligation to exhaust remedies is discharged. *York Apts. Tenants Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1079, 2004 D.C. App. LEXIS 405 (2004).

Motorist's failure to exhaust administrative remedies did not prevent him from bringing suit challenging decision of the District of Columbia to forgive outstanding traffic tickets but to refuse to refund those already paid, given that Bureau of Traffic Adjudication (BTA) only provided a forum for adjudication of motor vehicle and traffic violations, not challenges to the District's discretionary policy decisions, and thus, the Superior Court was the proper forum for motorist's statutory and constitutional claims against District. *Kovach v. District of Columbia*, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Where a statute provides an administrative forum to resolve disputes, the prescribed administrative remedy must be exhausted before judicial relief may be sought. *Kovach v. District of Columbia*, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Doctrine of "exhaustion of administrative remedies" provides that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted. *Fisher v. District of Columbia*, 803 A.2d 962, 2002 D.C. App. LEXIS 385 (2002).

Doctrine of exhaustion of administrative remedies is not without exceptions; a court of equity may waive that requirement where the claimant makes a strong showing of compelling circumstances to justify such a waiver. *Fisher v. District of Columbia*, 803 A.2d 962, 2002 D.C. App. LEXIS 385 (2002).

Although there is no formula for identifying compelling circumstances justifying waiver of the doctrine of exhaustion of administrative remedies, a lack of fault on the part of the claimant is a necessary prerequisite. *Fisher v. District of Columbia*, 803 A.2d 962, 2002 D.C. App. LEXIS 385 (2002).

Laid-off public school attendance officer failed to exhaust administrative remedies for denial of severance pay, where he did not appeal to the Office of Employee Appeals within 15 days of denial. *Fisher v. District of Columbia*, 803 A.2d 962, 2002 D.C. App. LEXIS 385 (2002).

Terminated employee of District of Columbia Public School System (DCPS) could not bring §§ 1983 action against District alleging deprivation of constitutional rights arising out of noncompliance of post-termination procedures afforded relief to employees claiming discharge without cause, absent showing that administrative procedures available under District law were not constitutionally adequate; allegations that school district failed to follow time requirements for issuing findings was remediable under local District procedures, while District's Office of Employee Appeals (OEA) could assume jurisdiction of appeal that agency breached its time requirements and, thereby, prejudiced employee's ability to challenge the adverse action, even without a final agency decision on the matter. *Nelson v. State*, 772 A.2d 1154, 2001 D.C. App. LEXIS 119 (2001).

Doctrine of exhaustion applies where a claim is cognizable in the first instance by an administrative agency alone; judicial interference is withheld until the administrative process has run its course. *District of Columbia v. L.G. Indus.*, 758 A.2d 950, 2000 D.C. App. LEXIS 204 (2000).

Forum selection of the parties is not dispositive in determining whether under doctrine of primary jurisdiction, party must first resort to

agency before he or she may sue for adjudication. *District of Columbia v. L.G. Indus.*, 758 A.2d 950, 2000 D.C. App. LEXIS 204 (2000).

Trial court must be especially careful before resorting to injunctive remedy where the requested relief would enjoin agency action pending the outcome of administrative review. *District of Columbia v. L.G. Indus.*, 758 A.2d 950, 2000 D.C. App. LEXIS 204 (2000).

Licensee had no administrative remedy to exhaust before filing his claim for money damages against supervisor from the Bureau of Motor Vehicle Services (BMVS) arising from alleged negligent revocation of motorist's license, and thus, motorist's failure to appeal decision revoking license was not a failure to exhaust administrative remedies depriving trial court of jurisdiction over negligence claim against supervisor; any attempt to bring negligence claim before Appeals Board could not have been heard by Board. D.C. Code 1981, §§ 1-1510, 40-631, 40-635. *Gilles v. Ware*, 615 A.2d 533, 1992 D.C. App. LEXIS 269 (1992).

Exception to general rule requiring exhaustion of administrative remedies allowing trial court authority to review interlocutory challenge to agency's assertion of jurisdiction is expressly circumscribed by court's discretion. D.C. Code 1981, § 1-1510(a). *Bender v. District of Columbia Dep't of Employment Services*, 562 A.2d 1205, 1989 D.C. App. LEXIS 162 (1989).

Victim injured in assault for which assailant was arrested and convicted had waived his opportunity for hearing at which he could have established that he was not precluded from receiving crime victims' compensation by regulation on theory he had consented to or prolonged confrontation, or participated in other illegal conduct, and had thus failed to exhaust his administrative remedies or present contested case for which judicial review was available pursuant to statute, where victim was advised of claims examiner's determination he was not entitled to compensation and of his right to request hearing within 15 days, but failed to request hearing. D.C. Code 1981, §§ 1-1510, 3-401 to 3-415. *Siler v. District of Columbia Dep't of Employment Services*, 525 A.2d 620, 1987 D.C. App. LEXIS 354 (1987).

Extraordinary writs.

Superior court had jurisdiction to review Contract Appeals Board's (CAB) decisions in bid protest, and thus, superior court also possessed power under All Writs Act to issue temporary relief to disappointed bidder, even though CAB had not yet issued decision. D.C. Code 1981, §§ 1-233(a)(4), 1-1181.1 to 1-1192.6, 1-1189.3, 1-1502(8), 1-1510(a), 11-921; 18 U.S.C. §§ 1651, 1651(a). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Under applicable District of Columbia Administrative Procedure Act provisions, when an administrator failed to act punctually on matter before him for consideration, District of Columbia Court of Appeals was empowered solely to compel agency action unlawfully withheld, and thus even if gun owners who contended that police chief's failure to act within 365 days upon their applications for registration constituted an automatic grant of applications, had exhausted their administrative remedies and had not received any response from police department after one year, most advantageous result gun owners could exact from District of Columbia Court of Appeals would be order compelling police department to act on applications. D.C. Code § 1-1510(2); 5 U.S.C. § 706. *Fesjian v. Jefferson*, 399 A.2d 861, 1979 D.C. App. LEXIS 298 (1979).

Petition by recipients of aid to families with dependent children for a writ in nature of mandamus to compel implementation of retroactive payment order of commissioner of Department of Human Resources was dismissed as moot where requested action was tardily performed by administrative officers after petition was filed. D.C. Code §§ 1-1510, 11-722; 18 U.S.C. § 1651. *Dillard v. Yeldell*, 334 A.2d 578, 1975 D.C. App. LEXIS 339 (1975).

Proceedings before Zoning Commission on proposed interim amendments to zoning classification of area of city to preserve status quo of area as one of historical interest did not constitute a contested case within the Administrative Procedure Act subject to direct judicial review in the District of Columbia Court of Appeals; thus, that court would not issue writ of mandamus compelling Commission to publish notice of a public hearing at which proposed amendments would be considered. D.C. Code §§ 1-1501 to 1-1510. *Citizens Asso. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

Federal precedent.

Trial court's discretion to review interlocutory challenges to agency's assertion of jurisdiction should be exercised applying standards of judicial review found in Federal Administrative Procedure Act. D.C. Code 1981, § 1-1510(a); 5 U.S.C. § 551 et seq. *Bender v. District of Columbia Dep't of Employment Services*, 562 A.2d 1205, 1989 D.C. App. LEXIS 162 (1989).

Federal court decisions, which depended upon language of the federal Administrative Procedure Act [5 U.S.C. § 551 et seq.], were not pertinent in decision under state Administrative Procedure Act [D.C. Code 1981, §§ 1-1501 to 1-1510] which contained no equivalent language. *Dell v. Department of Employment Services*, 499 A.2d 102, 1985 D.C. App. LEXIS 496 (1985).

As the District of Columbia Administrative Procedure Act is modeled on federal Act to great extent, particularly with respect to definition of adjudicatory proceedings, judicial constructions of analogous provisions in the federal Act were persuasive. 5 U.S.C. §§ 551 et seq., 554(a); D.C. Code 1978 Supp., § 1-1502(8)(C). *Pendleton v. District of Columbia Bd. of Elections & Ethics*, 449 A.2d 301, 1982 D.C. App. LEXIS 405 (1982).

Since definition of "contested case" in District of Columbia Administrative Procedure Act was intended to be synonymous with that of "adjudication" in the federal Administrative Procedure Act, decisions of District of Columbia Court of Appeals construing provision of District of Columbia Administrative Procedure Act, insofar as feasible, should be harmonious with those of federal courts construing corresponding provision of federal Administrative Procedure Act. D.C. Code § 1-1501 et seq.; 5 U.S.C. § 500 et seq. *Debruhl v. District of Columbia Hackers' License Appeal Board*, 384 A.2d 421, 1978 D.C. App. LEXIS 440 (1978).

Legislative history of the District of Columbia Administrative Procedure Act shows a clear congressional intent that court employ the same standards for judicial review as other federal courts employ for the Federal Administrative Procedure Act. 5 U.S.C. § 706; D.C. Code § 1-1510(1). *Coakley v. Police & Firemen's Retirement & Relief Board*, 370 A.2d 1345, 1977 D.C. App. LEXIS 434 (1977).

Finality of agency action.

Order of Board of Zoning Adjustment (BZA) that ruled in favor of neighbor in appeal of issuance of permit by Department of Consumer and Regulatory Affairs (DCRA) that allowed property owners to build retaining wall was sufficiently "final" for Court of Appeals to review it, even though order mandated no specific relief; property owners were severely restricted in the use of their land by BZA's order and thus were aggrieved by order. *Economides v. D.C. Bd. of Zoning Adjustment*, 954 A.2d 427, 2008 D.C. App. LEXIS 373 (2008).

As general matter, Court of Appeals has jurisdiction to review only agency orders or decisions that are final. D.C. Code 1981, § 1-1510. *Warner v. District of Columbia Dep't of Employment Services*, 587 A.2d 1091, 1991 D.C. App. LEXIS 59 (1991).

To be considered final, and to trigger right of appellate review, administrative order in contested case must impose obligation, deny right, or fix some legal relationship as consummation of administrative process. D.C. Code 1981, §§ 1-1501 et seq., 1-1502(11), 1-1510(a). *Levy v. District of Columbia Bd. of Zoning Adjustment*, 570 A.2d 739, 1990 D.C. App. LEXIS 36 (1990).

In order for trial court to invoke its authority to review an interlocutory challenge to an agen-

cy's assertion of jurisdiction, party seeking review must show that agency action is plainly in excess of its delegated powers; error must involve more than a mere error of fact or law, there must be action in absence of statutory authority. D.C. Code 1981, § 1-1510(a). *Bender v. District of Columbia Dep't of Employment Services*, 562 A.2d 1205, 1989 D.C. App. LEXIS 162 (1989).

Department of Employment Service's assertion of jurisdiction predicated on finding that employee's work was principally located in District of Columbia was a determination which court would not review on interlocutory basis; agency action was not in clear access or plain contravention of its statutory mandate. D.C. Code 1981, § 1-1510(a). *Bender v. District of Columbia Dep't of Employment Services*, 562 A.2d 1205, 1989 D.C. App. LEXIS 162 (1989).

Board of zoning adjustment's denial of application for special exception was final for review purposes in spite of pending motion for reconsideration. D.C. Code §§ 1-1501 et seq., 11-722; D.C. Code SCR, Civil Rules 15, 15(b), c). *Kenmore Joint Venture v. District of Columbia Bd. of Zoning Adjustment*, 391 A.2d 269, 1978 D.C. App. LEXIS 564 (1978).

Findings of fact and conclusions of law.

Fact that District of Columbia Administrative Procedure Act expressly imposes a statement of reasons requirement only in contested cases does not bar imposing a requirement of state reasons in other contexts; the act was meant only to prescribe minimum procedures. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1505(c), 1-1510. *Citizens Ass'n of Georgetown, Inc. v. Zoning Com. of District of Columbia*, 477 F.2d 402, 1973 U.S. App. LEXIS 11831 (C.A.D.C. 1973).

It is not the function of the reviewing court to superimpose its own opinion over the findings of the agency, but only to determine whether the agency's decision is supported by substantial evidence. *Davidson v. Office of Empl. Appeals*, 886 A.2d 70, 2005 D.C. App. LEXIS 546 (2005).

As long as agency decisions are supported by substantial evidence in the record, they must be affirmed notwithstanding that there may be contrary evidence in the record. *Davidson v. Office of Empl. Appeals*, 886 A.2d 70, 2005 D.C. App. LEXIS 546 (2005).

The Court of Appeals defers to administrative agency decisions so long as they flow rationally from the facts and are supported by substantial evidence. *Majerle Mgmt. v. D.C. Rental Hous. Comm'n*, 866 A.2d 41, 2004 D.C. App. LEXIS 698 (2004).

An administrative order can only be sustained on the grounds relied on by the agency. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*,

862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

Agency's legal conclusions are entitled to less deference on appeal than its factual findings because of the reviewing court's legal expertise. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

An agency's findings of fact that are supported by substantial evidence will be sustained even if there is substantial evidence in the record to support contrary findings. *Wash. Gas Light Co. v. D.C. PSC*, 856 A.2d 1098, 2004 D.C. App. LEXIS 418 (2004).

The function of the court in reviewing administrative action is to assure that the agency has given full and reasoned consideration to all material facts and issues, but the court can perform this function only when the agency discloses the basis of its order by an articulation with reasonable clarity of its reasons for the decision. *Felicity'S, Inc. v. D.C. Bd. of Appeals & Review*, 851 A.2d 497, 2004 D.C. App. LEXIS 317 (2004).

The mere existence of substantial evidence contrary to the agency's factual findings does not allow the reviewing court to substitute its judgment for that of the agency. *Burge v. D.C. Dep't of Empl. Servs.*, 842 A.2d 661, 2004 D.C. App. LEXIS 53 (2004).

The reviewing court will not disturb an agency decision if it rationally flows from the factual findings on which it is based and if those findings are supported by substantial evidence. *Burge v. D.C. Dep't of Empl. Servs.*, 842 A.2d 661, 2004 D.C. App. LEXIS 53 (2004).

District of Columbia Housing Authority (DCHA) did not state findings of fact on each material, contested factual issue, in deciding to terminate recipient's eligibility for housing subsidies under the Tenant Assistance Program (TAP) based on allegation that she fraudulently under-reported her income in order to obtain more assistance, and thus such decision was subject to reversal under the Administrative Procedure Act; DCHA's decision did not refer to applicable regulation mandating permanent termination of benefits for fraud, did not mention the word "fraud," and merely provided a summary of evidence presented with no explicit assessment of credibility of the evidence or an evaluation of facts against definition of fraud. *Powell v. D.C. Hous. Auth.*, 818 A.2d 188, 2003 D.C. App. LEXIS 132 (2003).

In terminating recipient's housing subsidies on ground that she had fraudulently under-reported her income in order to obtain more assistance, the District of Columbia Housing Authority (DCHA) was required to articulate the evidence with respect to each element of fraud, make a finding as to each, and state a conclusion as to the fraud alleged. *Powell v.*

D.C. Hous. Auth., 818 A.2d 188, 2003 D.C. App. LEXIS 132 (2003).

To pass muster, an administrative agency decision must state findings of fact on each material, contested factual issue; those findings must be supported by substantial evidence in the agency record; and the agency's conclusions of law must follow rationally from its findings. *Murchison v. D.C. Dep't of Pub. Works*, 813 A.2d 203, 2002 D.C. App. LEXIS 736 (2002).

When an administrative body fails to make findings on material, contested issues of fact, a reviewing court cannot fill in the gap and make its own findings; rather, the court must remand the case to the agency for it to make the necessary factual determinations. *Murchison v. D.C. Dep't of Pub. Works*, 813 A.2d 203, 2002 D.C. App. LEXIS 736 (2002).

The function of the court in reviewing administrative action is to assure that the agency has given full and reasoned consideration to all material facts and issues, and the court can perform this function only when the agency discloses the basis of its order by an articulation with reasonable clarity of its reasons for the decision. *Stancil v. D.C. Rental Hous. Comm'n*, 806 A.2d 622, 2002 D.C. App. LEXIS 528 (2002).

If an administrative agency fails to make a finding on a material, contested issue, Court of Appeals cannot fill the gap by making its own determination from the record, but must remand the case for findings on that issue. *Fontenot v. D.C. Dep't of Empl. Servs.*, 804 A.2d 1104, 2002 D.C. App. LEXIS 484 (2002).

Court of Appeals must uphold Department of Human Services' (DHS) decision on Medicaid eligibility if the findings of fact are supported by substantial evidence in the record considered as a whole and the conclusions of law flow rationally from these findings. *McKenzie v. D.C. Dep't of Human Servs.*, 802 A.2d 356, 2002 D.C. App. LEXIS 377 (2002).

An agency must give full and reasoned consideration to all material facts and issues and must disclose the basis of its order by an articulation with reasonable clarity of its reasons for the decision. *Branson v. D.C. Dep't of Empl. Servs.*, 801 A.2d 975, 2002 D.C. App. LEXIS 360 (2002).

As used in the context of judicial review of administrative agency decisions, the term "substantial evidence" means more than a mere scintilla, such that reasonable minds might accept it as adequate to support a conclusion. *Office of the People's Counsel v. PSC of the Dist. of Columbia*, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

Decisions under the Administrative Procedure Act must meet three basic requirements: (1) the decision must state findings of fact on each material, contested factual issue; (2) those findings must be based on substantial evidence;

and (3) the conclusions of law must follow rationally from the findings. *Pro-Football, Inc. v. District of Columbia Dep't of Empl. Servs.*, 782 A.2d 735, 2001 D.C. App. LEXIS 217 (2001).

Notwithstanding a preference for the treating physician's testimony over that of a physician hired to evaluate a workers' compensation claim, the hearing examiner, as judge of the credibility of witnesses, may reject the testimony of a treating physician and decide to credit the testimony of another physician when there is conflicting evidence, and in so doing, the hearing examiner must give reasons for rejecting a treating physician's testimony. *Clark v. District of Columbia Dep't of Empl. Servs.*, 772 A.2d 198, 2001 D.C. App. LEXIS 102 (2001).

Disagreement is not a basis for rejecting factual findings and credibility determinations made by the administrative law judge. *District of Columbia v. King*, 766 A.2d 38, 2001 D.C. App. LEXIS 24 (2001).

In reviewing administrative agency decision, Court of Appeals considers whether agency has made finding of fact on each material contested issue of fact, whether substantial evidence of record supports each finding, and whether conclusions legally sufficient to support the decision flow rationally from the findings. *Pickrel v. District of Columbia Dep't of Empl. Servs.*, 760 A.2d 199, 2000 D.C. App. LEXIS 233 (2000).

Reviewing court must affirm the agency's decision when: (1) the agency made findings of fact on each materially contested issue of fact; (2) substantial evidence supports each finding; and (3) agency's conclusions flow rationally from its findings of fact. D.C. Code 1981, §§ 1-1510(a)(3)(E). *Giles v. District of Columbia Dep't of Empl. Servs.*, 758 A.2d 522, 2000 D.C. App. LEXIS 203 (2000).

Court of Appeals will uphold agency's finding if it is rational and is supported by substantial evidence. D.C. Code 1981, § 1-1510(a)(3). *Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n*, 743 A.2d 1231, 2000 D.C. App. LEXIS 9 (2000).

When reviewing agency decision, appellate court must consider whether the agency findings are supported by reliable, probative, and substantial evidence in the record, and whether the conclusions reached by the agency flow rationally from these findings. *Jewell v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, 738 A.2d 1228, 1999 D.C. App. LEXIS 250 (1999).

Administrative agency must make findings on each material issue of fact, its findings must be supported by substantial evidence, and its conclusions must flow rationally from those findings and comport with applicable law. D.C. Code 1981, § 1-1510. *Wahlne v. District of*

Columbia Dep't of Empl. Servs., 704 A.2d 1196, 1997 D.C. App. LEXIS 284 (1997).

If administrative agency fails to make finding on material, contested issue of fact, Court of Appeals cannot fill gap by making its own determination from record, but must remand case for findings on that issue. *Jimenez v. District of Columbia Dep't of Empl. Servs.*, 701 A.2d 837, 1997 D.C. App. LEXIS 239 (1997).

Scope of judicial review of agency decision is limited: agency must make findings on each material issue of fact, factual findings must be supported by substantial evidence on the record as a whole, and agency's conclusions must flow rationally from those findings and comport with applicable law. D.C. Code 1981, § 1-1510. *Williamson v. District of Columbia Bd. of Dentistry*, 647 A.2d 389, 1994 D.C. App. LEXIS 150 (1994).

Court of Appeals' review of agency's findings is limited to inquiry as to whether agency has made finding of fact on each material contested issue of fact, whether substantial evidence of record supports each finding, and whether conclusions legally sufficient to support decision flow rationally from findings. D.C. Code 1981, §§ 1-1501 et seq., 1-1509(e). *Cruz v. District of Columbia Dep't of Employment Servs.*, 633 A.2d 66, 1993 D.C. App. LEXIS 283 (1993).

When agency fails to make finding on material contested issue of fact, Court of Appeals cannot fill gap by making its own determination from record, but must remand case for findings on that issue. *Rafferty v. District of Columbia Zoning Comm'n*, 583 A.2d 169, 1990 D.C. App. LEXIS 287 (1990).

If agency's findings of fact were supported by substantial evidence, the Court of Appeals must accept such findings, even though it might have reached another result had it been the trier of fact. *Dowd v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, 485 A.2d 212, 1984 D.C. App. LEXIS 568 (1984).

When an agency does not exceed authority vested in it by statute, sole task of the Court of Appeals is to examine record and then determine whether findings upon which its order is based do have support. *Dowd v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, 485 A.2d 212, 1984 D.C. App. LEXIS 568 (1984).

If administrative agency in a contested case fails to make a finding on a material, contested issue of fact, Court of Appeals cannot fill the gap by making its own determination from record, but must remand case for finding on that issue. D.C. Code 1981, § 1-1509(e). *Colton v. District of Columbia Dep't of Employment Services*, 484 A.2d 550, 1984 D.C. App. LEXIS 547 (1984).

In reviewing agency ruling, District of Columbia Court of Appeals must determine

whether agency has made finding of fact on each material contested issue of fact, whether substantial evidence of record supports each finding and whether conclusions of law follow rationally from the findings. D.C. Code 1981, §§ 1-1509(e), 1-1510(a)(3)(A, E). *American Combustion, Inc. v. Minority Business Opportunity Com.*, 441 A.2d 660, 1982 D.C. App. LEXIS 274 (1982).

Under District of Columbia Administrative Procedure Act, agency findings of fact and conclusions of law must be affirmed if supported by and in accordance with reliable, probative and substantive evidence in record as whole. D.C. Code 1981, §§ 1-1501 et seq., 1-1510. *Kegley v. District of Columbia*, 440 A.2d 1013, 1982 D.C. App. LEXIS 294 (1982).

"Substantial evidence" test in statute requiring that every agency decision be accompanied by written findings of fact and conclusions of law supported by and in accordance with reliable, probative, and substantial evidence requires that agency make written findings of basic fact on all material contested issues, that such findings, taken together, must rationally lead to conclusions of law which, under governing statute, are legally sufficient to support agency's decision, and that each finding of fact must be supported by evidence sufficient to convince reasonable minds of its adequacy. D.C. Code § 1-1509(e). *Citizens Asso. of Georgetown, Inc. v. District of Columbia Zoning Com.*, 402 A.2d 36, 1979 D.C. App. LEXIS 364 (1979).

When findings of basic facts are each supported by sufficient evidence and, when taken together, rationally lead to conclusions of law and an agency decision consistent with governing statute, the Court of Appeals should affirm that decision; agency is not legally required to explain, in addition, why it favored one witness or one statistic over another. D.C. Code § 1-1509(e). *Citizens Asso. of Georgetown, Inc. v. District of Columbia Zoning Com.*, 402 A.2d 36, 1979 D.C. App. LEXIS 364 (1979).

A reviewing court is bound by a decision of an agency that follows from its findings, if the findings are supported by substantial evidence, although court might have reached the contrary result based on an independent review of the record. D.C. Code § 1-1501 et seq. *Washington Post Co. v. District Unemployment Compensation Board*, 377 A.2d 436, 1977 D.C. App. LEXIS 380 (1977).

Under District of Columbia Administrative Procedure Act, agency findings of fact and conclusions of law which are challenged on evidentiary grounds must be affirmed if supported by and in accordance with reliable, probative and substantial evidence in the whole administrative record. D.C. Code §§ 1-1509(e), 1-1510(3)(E). *Jones v. Police & Firemen's Retirement & Relief Board*, 375 A.2d 1, 1977 D.C. App. LEXIS 446 (1977).

In reviewing findings of an agency of the District of Columbia, court must consider whether agency findings are supported by reliable, probative and substantial evidence in the record and whether the conclusions reached by the agency flow rationally from those findings, and if agency's decision is supported by substantial evidence, court must affirm its action even though it might have reached another result. D.C. Code § 1-1510(3)(E). *Coakley v. Police & Firemen's Retirement & Relief Board*, 370 A.2d 1345, 1977 D.C. App. LEXIS 434 (1977).

Legislative history of Administrative Procedure Act providing, inter alia, that findings and conclusions of administrative agencies are to be set aside on judicial review if they are found to be unsupported by substantial evidence in record shows a clear congressional intent that District of Columbia Court of Appeals employ same standards for judicial review as other federal courts employ for Federal Administrative Procedure Act. D.C. Code §§ 1-1501 et seq., 1-1510(3)(E). *Wallace v. District Unemployment Compensation Board*, 294 A.2d 177, 1972 D.C. App. LEXIS 229 (1972).

Harmless or prejudicial error.

"Rule of prejudicial error" which may be invoked by Court of Appeals in reviewing administrative decisions, is that reversal and remand are required only where substantial doubt exists as to whether agency would have made same ultimate finding with error removed. D.C. Code 1981, § 1-1510(b). *LCP, Inc. v. District of Columbia Alcoholic Beverage Control Bd.*, 499 A.2d 897, 1985 D.C. App. LEXIS 525 (1985).

Court of Appeals may invoke rule of prejudicial error in reviewing administrative decisions, and reversal and remand on basis of error is required only if substantial doubt exists as to whether agency would have made same ultimate finding with error removed. D.C. Code 1981, § 1-1510. *Arthur v. District of Columbia Nurses' Examining Bd.*, 459 A.2d 141, 1983 D.C. App. LEXIS 347 (1983).

Possibility of prejudice from admission of incompetent evidence may be dispelled by showing that matter involved was not relied on. D.C. Code § 1-1510. *Sherman v. Commission on Licensure to Practice Healing Art*, 407 A.2d 595, 1979 D.C. App. LEXIS 481 (1979).

Health and environment regulations and offense.

District of Columbia Department of Consumer and Regulatory Affairs' (DCRA) temporary suspension of building permit for contaminated soil remediation facility did not violate owner's procedural due process rights for purposes of his § 1983 claim against District, in light of owner's history of noncompliance with

environmental, building and zoning laws and safety concerns concerning illegal presence of contaminated soil at site, which justified interim suspension to allow gathering of further information of facility's impact on surrounding community, and in light of availability of adequate post-deprivation remedies with which to challenge suspension; owner could have sought expedited administrative hearing within 72 hours of suspension, could have sought direct review of suspension in Court of Appeals, or could have sued for injunctive relief or writ of mandamus. U.S. Const. Amend. 5; 42 U.S.C. § 1983; D.C. Code 1981, §§ 1-1510, 6-2706. *Tri-County Indus. v. District of Columbia*, 932 F. Supp. 4, 1996 U.S. Dist. LEXIS 9024 (1996), affirmed in part and vacated in part by, remanded by 104 F.3d 455, 322 U.S. App. D.C. 412, 1997 U.S. App. LEXIS 505 (1997).

Mayor's agent, like any administrative agency, must operate within applicable statutory constraints in performing his or her assigned task under Preservation Act. D.C. Code 1981, § 1-1510(a)(3)(C). *District of Columbia Preservation League v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 711 A.2d 1273, 1998 D.C. App. LEXIS 111 (1998).

To support finding of special merit justifying demolition of building in historic district, findings of fact must be based on substantial evidence on each material contested issue, and mayor's agent must reach rational conclusions based on those findings. D.C. Code 1981, §§ 1-1509(e), 1-1510(a)(3)(E). *Committee of 100 on Federal City v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 571 A.2d 195, 1990 D.C. App. LEXIS 49 (1990).

In case involving demolition of historic building, determination by mayor's agent that project is of special merit implicitly includes finding that issuance of demolition permit is necessary for proposed project to proceed. D.C. Code 1981, §§ 1-1509(e), 1-1510(a)(3)(E). *Committee of 100 on Federal City v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 571 A.2d 195, 1990 D.C. App. LEXIS 49 (1990).

Court of Appeals lacked jurisdiction under the District of Columbia Administrative Procedure Act to review decision of the Joint Committee on Landmarks of the National Capital which designated a building as a historic landmark since the Joint Committee was not a District of Columbia agency. D.C. Code 1981, § 1-1510(a). *A & G Ltd. Partnership v. Joint Committee on Landmarks of Nat'l Capital*, 449 A.2d 291, 1982 D.C. App. LEXIS 403 (1982).

Although tenants arguably satisfied certain requirements for standing, that their interests in challenging decision of Board of Appeals and Review granting to landlord variance excusing landlord from compliance with certain emergency directives to correct housing code violations, and legislature had not precluded judi-

cial review of housing code appeals decided by Board of Appeals and Review, nor had it expressly withheld review from persons such as tenants, tenants did not have standing where they did not allege any concrete injury in fact. D.C. Code § 1-1510. *Lee v. District of Columbia Board of Appeals & Review*, 423 A.2d 210, 1980 D.C. App. LEXIS 405 (1980).

For purposes of determining whether tenants had standing to challenge decision of Board of Appeals and Review which granted landlord variance excusing landlord from compliance with certain emergency directives to correct housing code violations, where tenants did not allege that they had suffered, or were in immediate danger of suffering, any direct harm as result of Board's decision granting such variance, but, rather, essential services, cooking gas and water, over which action ostensibly was being contested were restored by city shortly after Board hearing, and continued to be provided by city, tenants did not have standing to challenge decision based on mere possibility that tenants could have their interim utility services discontinued at some point in future, since, rather than being immediate and concrete, tenants' injuries were at most speculative. D.C. Code §§ 1-1510, 5-313. *Lee v. District of Columbia Board of Appeals & Review*, 423 A.2d 210, 1980 D.C. App. LEXIS 405 (1980).

Even if tenants could have status as "persons" within meaning of Administrative Procedure Act standing provision, tenants were still required to satisfy each prong of standing test, that challenged action had caused tenant injury in fact, that interest sought to be protected is arguably within zone of interests to be protected or regulated by statute or constitutional guarantee in question and that there was no clear legislative intent to withhold judicial review either from class of persons or in type of case involved. D.C. Code § 1-1510. *Lee v. District of Columbia Board of Appeals & Review*, 423 A.2d 210, 1980 D.C. App. LEXIS 405 (1980).

Where petitioner had notice of condemnation and order of demolition at time of alleged purchase of building, fact that he did not have notice of contract for demolition was immaterial and his alleged purchase did not alter his position as a stranger to proceedings before Board of Condemnation for Insanitary Buildings. D.C. Code § 1-1510. *Basiliko v. Government of Dist. of Columbia*, 283 A.2d 816, 1971 D.C. App. LEXIS 237 (1971).

Where Board of Condemnation for Insanitary Buildings entered orders of condemnation and demolition of premises and petitioner allegedly purchased the building, petitioner acquired no greater rights than those which prior owner had when the admittedly valid orders were entered. D.C. Code § 1-1510. *Basiliko v. Gov-*

ernment of Dist. of Columbia, 283 A.2d 816, 1971 D.C. App. LEXIS 237 (1971).

Where Board of Condemnation for Insanitary Buildings awarded contract for demolition of premises and petitioner who had allegedly purchased the building did not allege that orders of condemnation and demolition caused him any injury or that such orders were entered arbitrarily, capriciously or in excess of statutory authority, petitioner did not have standing to challenge action of the agency under the District of Columbia Administrative Procedure Act. D.C. Code § 1-1510. *Basiliko v. Government of Dist. of Columbia*, 283 A.2d 816, 1971 D.C. App. LEXIS 237 (1971).

Judicial notice.

Court of Appeals would not take judicial notice, in review of Public Service Commission decision approving plan to divest electric utility of its electrical generation assets, of newspaper articles and enactments by California legislature, where most if not all of such information was neither presented to the Commission or in existence at the time the Commission denied motion to reconsider its decision. *Moore Energy Res. v. PSC of the Dist. of Columbia*, 785 A.2d 300, 2001 D.C. App. LEXIS 237 (2001).

On appeal in suit for possession alleging nonpayment of rent, Court of Appeals would take judicial notice of its own files and records to find that there was no pending petition for review in tenant's name from any decision of Rental Housing Commission (RHC). D.C. Code 1981, § 1-1510(a). *Mack v. Zalco Realty*, 630 A.2d 1136, 1993 D.C. App. LEXIS 222 (1993).

Jurisdiction.

To present a *prima facie* case of discrimination, a plaintiff must show that (1) he is a member of a protected class; (2) he suffered an adverse employment action; and (3) the unfavorable action gives rise to an inference of discrimination. *Rountree v. Johanns*, 382 F.Supp.2d 19, 2005 U.S. Dist. LEXIS 16400 (2005), affirmed by 2006 U.S. App. LEXIS 28531 (D.C. Cir. Nov. 16, 2006).

Where defendants were entitled to summary judgment on plaintiffs' constitutional claims, district court declined to exercise pendent jurisdiction over claims arising under the law of the District of Columbia. D.C. Code § 1-1501 et seq. *Caton v. Barry*, 500 F. Supp. 45, 1980 U.S. Dist. LEXIS 13604 (1980).

Where plaintiff was notified that his driver's permit and registration were subject to suspension under the District of Columbia Motor Safety Responsibility Act of 1954, plaintiff appealed action to Board of Appeals and Review of Department of Motor Vehicles which upheld order of suspension, plaintiff's avenue of further relief was by petition for review in District of Columbia Court of Appeals and not in district

court. U.S. Const. Amend. 5; D.C. Code §§ 1-1501 et seq., 1-1510, 11-742, 40-437. *Cheek v. Washington*, 333 F. Supp. 481, 1971 U.S. Dist. LEXIS 12288 (1971).

District Court of Appeals had exclusive jurisdiction to consider challenge to Condominium and Cooperative Conversion and Sales Branch's (CCCSB) decision rejecting one application for registration as tenant organization under rental Housing Conversion and Sale Act and accepting another, although letter from CCCSB directly stated that unsuccessful applicant could challenge determination in superior court or petition for declaratory relief; jurisdiction could not be conferred upon superior court by an agency's mistake, judicial review of agency's decision was at the heart of the action, and only the District Court of Appeals had jurisdiction to review challenges to CCCSB actions made pursuant to Act. 2348 Ainger Place Tenants Ass'n v. District of Columbia, 982 A.2d 305, 2009 D.C. App. LEXIS 507 (2009).

As a general matter, appellate court has jurisdiction to review only agency orders or decisions that are final. D.C. Dep't of Empl. Servs. v. Vilche, 934 A.2d 356, 2007 D.C. App. LEXIS 556 (2007).

Hospital's petition for review of decision by Director of Department of Employment Services (DOES) was timely filed within 30 days of receiving notice of decision in conformance with DOES regulations, and thus, Court of Appeals had jurisdiction, even if hospital had received informal notice of the decision more than 30 days before the date of filing the petition; such informal notice was not in conformance with the agency's regulations. *Howard Univ. Hosp. v. D.C. Dep't of Empl. Servs.*, 881 A.2d 567, 2005 D.C. App. LEXIS 451 (2005).

Under the doctrine of "primary jurisdiction," issues in claims that are originally cognizable in the courts may, nonetheless, be referred to an administrative body for resolution when the issue falls within the special competence; even where an issue arguably falls within the specialized competence of an agency, the agency should be given an initial opportunity to determine whether or not it has jurisdiction. *Matthews v. District of Columbia*, 875 A.2d 650, 2005 D.C. App. LEXIS 265 (2005).

The doctrine of primary jurisdiction is rooted in teaching that, in cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies should not be passed over. *D.C. Water & Sewer Auth. v. Delon Hampton & Assocs.*, 851 A.2d 410, 2004 D.C. App. LEXIS 268 (2004).

Where no administrative remedy exists, the doctrine of primary jurisdiction does not apply. *D.C. Water & Sewer Auth. v. Delon Hampton & Assocs.*, 851 A.2d 410, 2004 D.C. App. LEXIS 268 (2004).

On appeal from decision by the District of Columbia Contract Appeals Board (CAB), the Court of Appeals had jurisdiction at least to decide whether the CAB acted plainly in excess of its delegated powers when ruling that it had jurisdiction over challenge to decision by District's Chief Financial Officer (CFO) to terminate contract. *Abadie v. D.C. Contract Appeals Bd.*, 843 A.2d 738, 2004 D.C. App. LEXIS 60 (2004).

The Court of Appeals has limited judicial power to preserve its jurisdiction or maintain the status quo by injunction pending review of an agency's action through the prescribed statutory channels; such power is merely incidental to the jurisdiction to review final agency action. *District of Columbia v. Greene*, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

Superior Court lacked original jurisdiction over District of Columbia employee's defamation action against District, based on supervisor's allegations of employee's extramarital affair with another supervisor; exclusive remedy was grievance under Comprehensive Merit Personnel Act (CMPA). *Baker v. District of Columbia*, 785 A.2d 696, 2001 D.C. App. LEXIS 247 (2001).

Not all requirements for filing a notice of appeal or petition for review are jurisdictional prerequisites. *Baker v. District of Columbia*, 785 A.2d 696, 2001 D.C. App. LEXIS 247 (2001).

Requirement that a petition for review on behalf of a corporation be signed by counsel is not jurisdictional in nature and, therefore, a signature irregularity may, but need not mandatorily, warrant dismissal. *Baker v. District of Columbia*, 785 A.2d 696, 2001 D.C. App. LEXIS 247 (2001).

Corporation's petition for review that was not initially signed by counsel but instead by corporation's president was not a jurisdictional defect and corporation was allowed to cure irregularity, where Public Service Commission and utility supporting Commission's decision that corporation was seeking review of were not misled or prejudiced by allowing corporation to cure irregularity, and president of corporation was permitted to appear on behalf of his company during Commission's proceedings. *Baker v. District of Columbia*, 785 A.2d 696, 2001 D.C. App. LEXIS 247 (2001).

If an adjudicative hearing is compelled by a non-legislative but nonetheless binding enactment, the Administrative Procedure Act's (APA) requirement of a hearing required by "any law" is met, so as to give the Court of Appeals jurisdiction to directly review an agency decision. *J.C. & Assocs. v. State Bd. of Appeals & Review*, 778 A.2d 296, 2001 D.C. App. LEXIS 164 (2001).

The "doctrine of primary jurisdiction" applies where a claim is originally cognizable in the

courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views. *Lawlor v. District of Columbia*, 758 A.2d 964, 2000 D.C. App. LEXIS 206 (2000).

Under doctrine of primary jurisdiction, superior court was required to decline to exercise its jurisdiction over occupant's action against District involving question of validity of certificate of occupancy, pending resolution of proceedings before Board of Zoning Adjustment (BZA) in which District charged occupant with operating its transfer station without valid certificate of occupancy, even though occupant's action was filed before District began administrative proceedings. *Lawlor v. District of Columbia*, 758 A.2d 964, 2000 D.C. App. LEXIS 206 (2000).

Under the doctrine of primary jurisdiction, when a claim is originally cognizable in the courts but requires resolution of an issue within the special competence of an administrative agency, the party must first resort to the agency before he or she may sue for an adjudication. *Lawlor v. District of Columbia*, 758 A.2d 964, 2000 D.C. App. LEXIS 206 (2000).

Doctrine of primary jurisdiction applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views. *Lawlor v. District of Columbia*, 758 A.2d 964, 2000 D.C. App. LEXIS 206 (2000).

Although developer arguably waived claim that statutory definition of "special merit," which developer was required to show in order to obtain demolition permit for historic building, was unconstitutionally vague by failing to present argument before Mayor's Agent, developer's challenge was not procedural and was not barred by state law and, thus, Court of Appeals was not precluded from considering it, and would choose to do so, as record was adequate and parties had joined issue. *D.C. Code 1981, § 5-1002(11). Kalorama Heights Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 655 A.2d 865, 1995 D.C. App. LEXIS 59 (1995).

When party is not entitled to direct appellate review of agency's decision, action for redress may be had in superior court. *United States v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 995, 1994 D.C. App. LEXIS 50 (1994).

To establish direct review jurisdiction in Court of Appeals over administrative determination, petitioner must overcome two obstacles:

administrative hearing must be either statutorily or constitutionally compelled, and hearing must be adjudicatory rather than legislative in nature. D.C. Code 1981, § 1-1501 et seq. *Timus v. District of Columbia Dep't of Human Rights*, 633 A.2d 751, 1993 D.C. App. LEXIS 273 (1993).

Court of Appeals' jurisdiction to hear direct appeal from administrative orders and decisions is limited to petitions from decisions in proceedings in which legal rights, duties, or privileges are required, by any law or by constitutional right, to be determined after agency hearing. D.C. Code 1981, §§ 1-1502(8), 1-1510(a), 11-722. *Lawrence v. District of Columbia Bd. of Elections & Ethics*, 611 A.2d 529, 1992 D.C. App. LEXIS 197 (1992).

University instructor, who lost his position as result of reduction in force, was given adequate notice and opportunity to be heard, and thus was not denied due process, even if some property right were implicated by reduction in force action; instructor could invoke general equitable jurisdiction of superior court so that he would be afforded right to hearing after reduction, and instructor was given at least 90 days advance notice of reduction in force action, although he was not permitted to appeal to the Office of Employee Appeals. D.C. Code 1981, §§ 1-1501 et seq., 1-1510(a). *Davis v. University of Dist. of Columbia*, 603 A.2d 849, 1992 D.C. App. LEXIS 34 (1992).

Provision for judicial review in the human rights law does not expand scope of Court of Appeals jurisdiction to review administrative proceedings beyond that conferred by the Administrative Procedure Act, in that language of provision in the human rights law closely tracks language of the Administrative Procedure Act. D.C. Code 1981, §§ 1-1501 to 1-1510, 1-2554. *Lamont v. Rogers*, 479 A.2d 1274, 1984 D.C. App. LEXIS 459 (1984).

Court of Appeals' power to review administrative proceedings is conferred by the Administrative Procedure Act. D.C. Code 1981, §§ 1-1501 to 1-1510. *Lamont v. Rogers*, 479 A.2d 1274, 1984 D.C. App. LEXIS 459 (1984).

Complaint by applicants seeking to convert rental units of building to condominiums, which asserted that Department of Housing and Community Development wrongfully refused to accept and process application for registration of condominiums, was based on adverse action by an administrative agency in a contested case, and therefore exclusive jurisdiction lay in the Court of Appeals and not in the superior court. D.C. Code 1981, § 1-1510. *Brenneman Associates, Inc. v. District of Columbia*, 466 A.2d 459, 1983 D.C. App. LEXIS 468 (1983).

Administrative agency, as is the case with trial court, is competent to establish a record and then grant or deny relief prayed; fact that administrative agency may be without authority to invalidate statutory or regulatory scheme under which it operates does not mean that review of such agency decision, including resolution of constitutional questions raised by a party, is in a tribunal other than the Court of Appeals. D.C. Code § 1-1501 et seq. *Debruhl v. District of Columbia Hackers' License Appeal Board*, 384 A.2d 421, 1978 D.C. App. LEXIS 440 (1978).

District of Columbia Court of Appeals has jurisdiction to review administrative decisions or orders only if they emanate from agencies of the District of Columbia. D.C. Code §§ 1-1502(3-5), 1-1510, 11-722. *Latimer v. Joint Committee on Landmarks of Nat'l Capital*, 345 A.2d 484, 1975 D.C. App. LEXIS 248 (1975).

Joint Committee on Landmarks of the National Capital as an intergovernmental agency was not an agency of the District of Columbia, and the District of Columbia Court of Civil Appeals lacked jurisdiction to entertain petition for review of its action under the District of Columbia Administrative Procedure Act. D.C. Code §§ 1-1501 et seq., 1-1510, 11-722; National Historic Preservation Act of 1966, § 1 et seq., 16 U.S.C. § 470 et seq.; National Capital Planning Act of 1952, § 2, 40 U.S.C. § 71a; 40 U.S.C. § 104. *Latimer v. Joint Committee on Landmarks of Nat'l Capital*, 345 A.2d 484, 1975 D.C. App. LEXIS 248 (1975).

District of Columbia Court of Appeals is not proper forum to initiate litigation on constitutional matters, since it is an appellate court and not a court of original jurisdiction and rules on issues only after decision has been entered by trial court or by an agency in the contested case. D.C. Code §§ 1-1510, 5-412, 11-721, 11-722. *Dupont Circle Citizen's Asso. v. District of Columbia Zoning Com.*, 343 A.2d 296, 1975 D.C. App. LEXIS 433 (1975).

Petition for review of an order of the Contract Appeals Board for the District of Columbia cannot be brought in the Court of Appeals, since the Board is not an "agency" within meaning of the District Administrative Procedure Act. D.C. Code §§ 1-1501 et seq., 1-1502(4, 5). *Gunnell Constr. Co. v. Contract Appeals Board*, 282 A.2d 556, 1971 D.C. App. LEXIS 219 (1971).

Mere fact that proof at suspension hearing before permit control officer of District of Columbia Department of Motor Vehicles tended to show that 17-year-old driver, whose license was suspended, was driving while under influence of alcohol did not thereby convert proceedings, administrative in character, into a judicial proceeding of kind Congress assigned exclusively to juvenile court. D.C. Code §§ 1-1501 et seq.,

1-1510, 11-742, 11-1551, 16-2301. *Murphy v. Heath*, 256 A.2d 421, 1969 D.C. App. LEXIS 291 (App. 1969).

Labor and employment.

— In general.

District of Columbia Court of Appeals did not owe deference to decision by Office of Human Rights (OHR) that it had no authority to award prejudgment interest on back pay awarded to a former Department of Corrections (DOC) employee under rule that required agency to take remedial actions when an employee was discriminated against in violation of Human Rights Act (HRA), where OHR's interpretation misapplied accepted interpretive criteria in considering the relevant language in the regulations, its reasoning was logically flawed, and it did not consider the purpose of an interest award on back pay in light of the remedial objective of the DCHRA, and, thus, interpretation was incorrect as a matter of law and unreasonable. *D.C. Office of Human Rights v. D.C. Dep't of Corr.*, 40 A.3d 917, 2012 D.C. App. LEXIS 139 (2012).

While it is the Office of Employee Appeals' (OEA) final decision and not that of the administrative law judge (ALJ) that may be reviewed by Court of Appeals, the ALJ's findings of fact are binding at all subsequent levels of review unless they are not supported by substantial evidence. *D.C. Dep't of Pub. Works v. Colbert*, 874 A.2d 353, 2005 D.C. App. LEXIS 211 (2005).

The Court of Appeals reviews the Office of the Director of the Department of Employment Services' (DOES) legal conclusions de novo. *Providence Hosp. v. D.C. Dep't of Empl. Servs.*, 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

For the purpose of appellate review of Department of Employment Services (DOES) decisions, the Court of Appeals reviews the decision of the Director, not the hearing examiner. *Providence Hosp. v. D.C. Dep't of Empl. Servs.*, 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

Director of Department of Employment Services (DOES) was not entitled to adopt and apply to employer a new rule that an employer was required to provide an employee with notice and an opportunity to cure before applying for suspension of disability benefits; such a rule was not expressed in any statute or existing regulation, nor was it foreshadowed in previous DOES rulings, and thus, employer could not reasonably have been aware of such a requirement. *Epstein v. D.C. Dep't of Empl. Servs.*, 850 A.2d 1140, 2004 D.C. App. LEXIS 272 (2004).

The Court of Appeals must defer to the ALJ's findings of fact in a workers' compensation action. *Potomac Elec. Power Co. v. D.C. Dep't of*

Empl. Servs., 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

The ALJ's findings of fact in a workers' compensation action are binding at all subsequent levels of review unless they are unsupported by substantial evidence, and this is true even if the record contains substantial evidence to the contrary. *Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs.*, 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

Although the appeal is from a review of agency action by the trial court, rather than a direct appeal to the appellate court, the appellate court will review the Public Employee Relations Board (PERB) decision as if the matter had been heard initially in the appellate court. *Gibson v. D.C. Pub. Empl. Rels. Bd.*, 785 A.2d 1238, 2001 D.C. App. LEXIS 246 (2001).

Like the Director of the Department of Employment Services' (DOES), the Court of Appeals must affirm the hearing examiner's workers' compensation order if the findings of fact contained therein are supported by substantial evidence in the record as a whole and the law has been properly applied. *Washington Metro. Area Transit Auth. v. State Dep't of Empl. Servs.*, 770 A.2d 965, 2001 D.C. App. LEXIS 84 (2001).

Administrative Procedure Act restricted Court of Appeals' direct review to decisions in "contested cases" and, thus, it lacked jurisdiction to review preliminary determination of the former Department of Human Rights and Minority Business Development that there was no probable cause to believe that employer had violated Family and Medical Leave Act. *Small v. District of Columbia Office of Human Rights*, 768 A.2d 994, 2001 D.C. App. LEXIS 66 (2001).

Affidavits of employee and employer's counsel and unsworn correspondence from employee's counsel provided insufficient data for resolving conflicting stories as to whether enforceable settlement agreement existed in sex discrimination claim before Commission on Human Rights, and thus, Commission's findings that enforceable agreement existed based solely on documentary evidence were, necessarily, arbitrary and capricious. *D.C. Code 1981, § 1-1510(a)(3)(A). Garzon v. District of Columbia Comm'n Human Rights*, 578 A.2d 1134, 1990 D.C. App. LEXIS 175 (1990).

On review of Superior Court's review of decision by Office of Employee Appeals, Court of Appeals must examine administrative record to determine whether procedural error has been made, whether findings by Office of Employee Appeals are supported by substantial evidence in record, or whether Office's action was in some manner arbitrary, capricious or an abuse of discretion. *D.C. Code 1981, § 1-1510. Stokes v. District of Columbia*, 502 A.2d 1006, 1985 D.C. App. LEXIS 542 (1985).

Tenure of an officer of the District of Columbia is not directly reviewable by the Court of Appeals, but is reviewable by the superior court, and is identical to the scope of review of contested cases under the District of Columbia Administrative Procedures Act and, hence, requires a review of the administrative record to determine if there has been procedural error, if there is substantial evidence in the record to support the action of the trial board, or if the action is in some manner otherwise arbitrary, capricious, or an abuse of discretion. D.C. Code 1981, § 1-1502(8)(B). *Barry v. Holderbaum*, 454 A.2d 1328, 1982 D.C. App. LEXIS 516 (1982).

Minimum Wage and Industrial Safety Board order providing for a \$2.25-minimum hourly wage for persons employed in hotel, restaurant and allied occupations was not arbitrary and capricious. D.C. Code §§ 1-1510(3)(A), 36-401 et seq., 36-403. *Hotel Asso. of Washington v. District of Columbia Minimum Wage & Industrial Safety Board*, 318 A.2d 294, 1974 D.C. App. LEXIS 395 (1974).

Since order of Minimum Wage and Industrial Safety Board advising employer that it owed and should pay a former employee all commissions earned prior to termination of his employment was enforceable only through criminal prosecution or civil litigation in which issues of fact or law would be determined entirely upon the pleadings and trial record, and not upon the proceedings before the Board, Board's order was not an "appealable order" under the Administrative Procedure Act. D.C. Code §§ 1-1502(8), 1-1510, 36-605, 36-606(a), 36-608(a). *Sonderling Broadcasting Corp. v. District of Columbia Minimum Wage & Industrial Safety Board*, 315 A.2d 828, 1974 D.C. App. LEXIS 378 (1974).

— Police and firefighters, labor and employment.

Substantial evidence in the record, without making a credibility determination to resolve a conflict in testimony of employee and ambulance dispatcher, supported the agency's decision to remove fire department employee from his position as fire communications officer; employee testified that he identified the sick man as a "detox candidate" in his request for police or medical emergency assistance even though he had no information to that effect, he admitted that he used a sarcastic tone in his communication, and he testified that police could have responded to the scene and then radioed back for more assistance in the sick man was not a detox candidate and employee could have then upgraded the situation to the ambulance dispatcher. *District of Columbia v. Freneau*, 869 A.2d 711, 2005 D.C. App. LEXIS 45 (2005).

The substitute hearing judge's issuance of a decision on discharged employee's appeal with-

out conducting a new evidentiary hearing did not warrant remand for a new hearing, on appeal of employee's termination from fire department, where the substitute hearing judge's decision was based solely on employee's testimony. *District of Columbia v. Freneau*, 869 A.2d 711, 2005 D.C. App. LEXIS 45 (2005).

Fire department employee waived his appellate argument that challenged the substitution of hearing examiners where employee failed to object to the substitution of hearing examiners before the substitute examiner rendered a decision. *District of Columbia v. Freneau*, 869 A.2d 711, 2005 D.C. App. LEXIS 45 (2005).

Court of Appeals must examine the administrative record to determine whether there has been procedural error, whether there is substantial evidence in the record to support the Office of Employee Appeals (OEA) findings, or whether the OEA's action was in some manner otherwise arbitrary, capricious, or an abuse of discretion. *District of Columbia v. Freneau*, 869 A.2d 711, 2005 D.C. App. LEXIS 45 (2005).

Court of Appeals did not have jurisdiction over petitioner's consolidated petitions arising out of his discharge from fire department under statute which provides jurisdiction for contested cases in that statute excludes jurisdiction over contested cases which involve tenure decisions regardless of whether dismissal occurred in course of day-to-day exercise of personnel authority by an agency or resulted from enforcement of regulations whose validity was being challenged. D.C. Code 1981, §§ 1-1502(8), (8)(B), 1-1510. *Kennedy v. Barry*, 516 A.2d 176, 1986 D.C. App. LEXIS 452 (1986).

The Court of Appeals did not have jurisdiction to directly review employee's consolidated petitions arising out of his discharge from employment by fire department, in which petitioner allegedly challenged jurisdiction of mayor to review removal decision, in that petitioner did not seek immediate judicial review of mayor's decision to take jurisdiction as required by statute. D.C. Code 1981, § 1-1510(a). *Kennedy v. Barry*, 516 A.2d 176, 1986 D.C. App. LEXIS 452 (1986).

Superior court's review of matter involving tenure of District employee is same as scope of review of Court of Appeals under Administrative Procedure Act, which prohibits substitution of court's judgment in areas of expertise reserved for agency and under which agency findings of fact and conclusions of law must be affirmed if supported by and in accordance with reliable, probative and substantive evidence. D.C. Code 1981, § 1-1510. *Barry v. Wilson*, 448 A.2d 244, 1982 D.C. App. LEXIS 385 (1982).

On review of tenure decision of metropolitan police department trial board, superior court erred in retrying police officer's case and reweighing evidence in the record. D.C. Code

1981, § 1-1510. *Barry v. Wilson*, 448 A.2d 244, 1982 D.C. App. LEXIS 385 (1982).

When decision of superior court reviewing action of metropolitan police department trial board is appealed, Court of Appeals applies same scope of review it uses in reviewing contested cases; that is, review of administrative records to determine if there has been procedural error, if there is substantial evidence in record to support action of trial board, or if action is in some manner otherwise arbitrary, capricious, or abuse of discretion or contrary to law. D.C. Code 1981, § 1-1510. *Barry v. Wilson*, 448 A.2d 244, 1982 D.C. App. LEXIS 385 (1982).

Review of police trial board decision is properly in superior court. D.C. Code 1981, §§ 1-1501 et seq., 1-1502(8)(B). *Kegley v. District of Columbia*, 440 A.2d 1013, 1982 D.C. App. LEXIS 294 (1982).

Scope of review in superior court of a decision made by police trial board is same as Court of Appeals' scope of review of contested case under District of Columbia Administrative Procedure Act. D.C. Code 1981, §§ 1-1501 et seq., 1-1502(8)(B). *Kegley v. District of Columbia*, 440 A.2d 1013, 1982 D.C. App. LEXIS 294 (1982).

When decision of superior court reviewing action of police trial board is appealed, Court of Appeals conducts identical review that it would undertake if appeal had been heard initially in Court of Appeals. D.C. Code 1981, §§ 1-1501 et seq., 1-1510. *Kegley v. District of Columbia*, 440 A.2d 1013, 1982 D.C. App. LEXIS 294 (1982).

Metropolitan police department police trial board's findings that charges of malingering, engaging in outside employment, failing to submit form requesting outside employment, willfully and knowingly making untruthful statement pertaining to official duties, leaving service revolver in automobile and failing to report change of address were proved against police officer, who was subsequently dismissed from police force, were supported by ample evidence of record. D.C. Code 1981, §§ 1-1501 et seq., 1-1502(8)(B), 1-1510. *Kegley v. District of Columbia*, 440 A.2d 1013, 1982 D.C. App. LEXIS 294 (1982).

Disciplinary proceeding before Metropolitan Police Special Trial Board wherein officer, who was charged with conduct unbecoming an officer and with untruthful statements in relation to his official duties, was determined to be guilty of one specification and was fined involved officer's tenure as an employee, and thus, under Administrative Procedure Act, Court of Appeals did not have jurisdiction to review decision whereby Commissioner of district approved findings and recommendation of Board. D.C. Code §§ 1-1501 to 1-1510, 1-1502(8), (8) (B), 4-121, 4-122. *Matala v. Wash-*

ington, 276 A.2d 126, 1971 D.C. App. LEXIS 301 (1971).

Landlord and tenant.

— Re-entry and recovery of possession by landlord.

Party contesting decision of Rental Accommodations and Conversion Division (RACD) cannot seek direct review of that decision in either superior court or Court of Appeals, but must first take appeal to the Rental Housing Commission (RHC); final decision of RHC may then, and only then, be brought directly to appellate court by filing of petition for review. D.C. Code 1981, § 1-1510(a). *Mack v. Zalco Realty*, 630 A.2d 1136, 1993 D.C. App. LEXIS 222 (1993).

— Rent control.

Landlords' claim that District of Columbia agency responsible for administering local rent control laws intentionally deprived landlords of due process in carrying out adjudicatory functions was not within judicial review provision of District of Columbia Administrative Procedure Act and, therefore, exclusivity provision of that statute was inapplicable. D.C. Code 1981, § 1-1510(a); U.S. Const. Amends. 5, 14. *District Properties Associates v. District of Columbia*, 743 F.2d 21, 1984 U.S. App. LEXIS 18838 (C.A.D.C. 1984).

Landlords' complaint challenging actions taken by officials of District of Columbia agency responsible for administering local rent control laws which were relatively unrelated to agency's formal decisional process were not cognizable in judicial review proceeding under District of Columbia Administrative Procedure Act and, therefore, those claims in federal court were not precluded by exclusivity provision of that statute. D.C. Code 1981, § 1-1510(a); U.S.C. Const. Amends. 5, 14. *District Properties Associates v. District of Columbia*, 743 F.2d 21, 1984 U.S. App. LEXIS 18838 (C.A.D.C. 1984).

In action challenging closing of public health clinic by District of Columbia officials, claim that closing of clinic without affording patients a hearing violated due process clause of Fifth Amendment was substantial enough to permit exercise of pendent jurisdiction over closely related local law claims. D.C. Code 1978 Supp. §§ 1-171 to 1-171r, 1-1501 to 1-1510, 32-322; U.S. Const. Amend. 5; 18 U.S.C. § 1343. *Spivey v. Barry*, 665 F.2d 1222, 1981 U.S. App. LEXIS 17915 (C.A.D.C. 1981).

Low-income housing provider waived for appellate review question as to whether rent control regulation requiring perfection of rent ceiling adjustments by timely filing with rent administrator and affected tenants a certificate of election of adjustment of general applicability, lest face forfeiture of right to adjustment, was ultra vires or demonstration of unreason-

able exercise of authority by Rental Housing Commission (RHC), where provider failed to raise issue at administrative level, at hearing before RHC. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Rental Housing Commission's ruling on landlord's request for substantial hardship rent increase was not final order, subject to immediate judicial review, in view of Commission's adherence to its prior remand of case to rent administrator for further findings; instead, tenants' entitlement to review ripened only when rent administrator issued its decision on remand. D.C. Code 1981, §§ 1-1502(11), 1-1510, 45-2522(a). *Tenants of 1255 N.H. Ave. v. District of Columbia Rental Hous. Comm'n*, 647 A.2d 70, 1994 D.C. App. LEXIS 153 (1994).

Tenants' request for judicial review of decision of Rental Housing Commission granting substantial hardship rent increase to landlord was not subject to dismissal for failure of tenants to appeal rent administrator's remand decision to Commission, as Commission had already resolved all other issues in case and remanded issues were resolved by stipulation, so there was no adverse ruling from which tenants could appeal to Commission, and second administrative appeal would have been altogether futile. D.C. Code 1981, §§ 1-1502(11), 1-1510, 45-2522. *Tenants of 1255 N.H. Ave. v. District of Columbia Rental Hous. Comm'n*, 647 A.2d 70, 1994 D.C. App. LEXIS 153 (1994).

Tenant's claims that landlord was not properly registered with Rental Accommodations and Conversion Division (RACD) and that rent increases were subject to requirements of rent control law could only be reviewed in the Court of Appeals after being first litigated before the Rental Housing Commission (RHC). D.C. Code 1981, § 1-1510(a). *Mack v. Zalco Realty*, 630 A.2d 1136, 1993 D.C. App. LEXIS 222 (1993).

Pursuant to Administrative Procedure Act, Rental Housing Commission must address each material contested issue of fact in landlord's petition for substantial rehabilitation, and each of agency's findings must be supported by substantial evidence. D.C. Code 1981, § 1-1510(a)(3)(E). *Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com.*, 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

Tenant whose lease was still in effect when fire broke out and who was not alleged to have caused or occasioned fire continued as "tenant" for purposes of determining number of tenants needed to voluntarily agree to adjustment of rent ceiling; therefore, in view of fact that tenant's inclusion meant that only 60% rather than 70% of tenants had signed agreement, agreement was properly invalidated. D.C. Code 1981, § 1-1510(a)(3)(A); § 45-1561(f) (re-

pealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Finding that landlord had more than four residential tenants in her two rental buildings, so as not to be entitled to the small landlord exemption from rent control, was supported by substantial evidence. D.C. Code 1981, §§ 1-1510(a)(3)(E), 45-2503(33), 45-2515(a)(3); §§ 45-1503(27), 45-1516(a)(3) (repealed). *Temple v. District of Columbia Rental Housing Com.*, 536 A.2d 1024, 1987 D.C. App. LEXIS 520 (1987).

Rental Housing Commission's determination that rental property was held in partnership, in determining that property was not eligible for exemption from rent control, was supported by substantial evidence, where property was purchased only three weeks after purchasers formed partnership established to purchase real property to lease or resell, partnership was listed as agent for collection of rental payments in lease, notice of rent increase designated return address of partnership, and purchaser testified that subject property was owned by partnership. D.C. Code 1981, §§ 1-1510(a)(3)(E), 45-1516(a)(3) (repealed). *Price v. District of Columbia Rental Housing Com.*, 512 A.2d 263, 1986 D.C. App. LEXIS 369 (1986).

Landlord was not entitled to equitable relief from alleged prejudice caused by rent administrator's delay of 19 months in rendering its decision assessing treble damages against landlord for rental overcharges where landlord never complained of pace of proceedings or sought court order expediting proceedings. D.C. Code 1981, § 1-1510(a)(2). *Harris v. District of Columbia Rental Housing Com.*, 505 A.2d 66, 1986 D.C. App. LEXIS 293 (1986).

Where landlord was aware of applicable rent ceiling, but charged tenant sum well in excess of that amount, erroneously believing that apartment was exempt from rent control, his action constituted a knowing violation of rent control law, and his erroneous reading of statute did not excuse his violation of it. D.C. Code 1981, §§ 1-1510(a)(3)(E), 45-1591(a). *Feldman v. District of Columbia Rental Housing Com.*, 501 A.2d 781, 1985 D.C. App. LEXIS 547 (1985), vacated by 506 A.2d 1100, 1986 D.C. App. LEXIS 323 (D.C. 1986).

Finding of a knowing violation of rent control law must be upheld if it is supported by substantial evidence. D.C. Code 1981, §§ 1-1510(a)(3)(E), 45-1591(a). *Feldman v. District of Columbia Rental Housing Com.*, 501 A.2d 781, 1985 D.C. App. LEXIS 547 (1985), vacated by 506 A.2d 1100, 1986 D.C. App. LEXIS 323 (D.C. 1986).

Provision in Rental Housing Act of 1980 allowing tenants to bring action to enforce Rental Housing Commission decision was clearly applicable to tenants' action to enforce

Commission award against landlords and no manifest injustice would result in applying 1980 act, even though when tenants filed petition with rental accommodations office alleging rental overcharges an earlier act allegedly not allowing tenants to enforce decision was in effect, since 1980 act expressly supersedes earlier act, there is no savings clause in 1980 act providing application of earlier act to pending petitions, and landlords were attempting to resist enforcement of finally adjudicated liability. D.C. Code 1981, §§ 45-1501 to 45-1597, 45-1529. *Strand v. Frenkel*, 500 A.2d 1368, 1985 D.C. App. LEXIS 585 (1985).

Decision of Rental Housing Commission, adopting or rejecting compromise proposal, shall contain findings of fact and conclusions of law sufficient for review by Court of Appeals. D.C. Code 1981, §§ 1-1509(e), 1-1510. *Proctor v. District of Columbia Rental Housing Com.*, 484 A.2d 542, 1984 D.C. App. LEXIS 550 (1984).

Finding that landlord failed to provide verification of claimed lost income from uncollected rents was unsupported by documentation which landlord made available to rent administrator at hearing on landlord's hardship petition for upward adjustment of rent ceilings. D.C. Code 1981, § 1-1510(a)(3)(E). *Wire Properties, Inc. v. District of Columbia Rental Housing Com.*, 476 A.2d 679, 1984 D.C. App. LEXIS 414 (1984).

Evidence in rollback proceeding, including un rebutted testimony by president of tenant association that apartment building had been without heat more than 63 days during the winter, provided sufficient basis for finding of hearing examiner of Rental Housing Commission that building was without heat for 63 days. D.C. Code 1981, § 1-1510(a)(3)(E). *Bealer v. District of Columbia Rental Housing Com.*, 472 A.2d 901, 1984 D.C. App. LEXIS 324 (1984).

Court of Appeals' review of order of Rental Housing Commission is limited to whether Commission's findings are unsupported by substantial evidence in the record as a whole, or whether its decision is grounded on faulty legal premise, or amounts to abuse of discretion. D.C. Code 1980 Supp. § 1-1501(a)(1, 3). *Remin v. District of Columbia Rental Housing Com.*, 471 A.2d 275, 1984 D.C. App. LEXIS 304 (1984).

Finding by Rental Accommodations Commission that tenants' leases were ambiguous with respect to second paragraph, which provided for a fixed term of one year at a fixed amount of rent, first clause, which authorized continuation of the tenancy as a month-to-month tenancy upon the expiration of the lease, and second clause, which provided for increases in monthly rent only and did not specify whether those increases could be implemented during or only at the lease term, was not arbitrary, capri-

cious, an abuse of discretion or otherwise not in accordance with law; therefore, ambiguity was correctly construed against drafter, and therefore rental increase provisions applied only after the first year of tenants' tenancies. D.C. Code 1981, § 1-1510(a)(3)(A). *Interstate General Corp. v. District of Columbia Rental Accommodations Com.*, 441 A.2d 252, 1982 D.C. App. LEXIS 265 (1982).

In reviewing factual and legal findings of Rental Accommodations Commission, role of Court of Appeals is closely circumscribed to examination of whether agency's conclusions were based on substantial evidence. D.C. Code §§ 1-1510, 17-305. *Tenants Council of Tiber Island-Carrollsborg Square v. District of Columbia Rental Accommodations Com.*, 426 A.2d 868, 1981 D.C. App. LEXIS 213 (1981).

Where renter, who challenged decision of Rental Accommodations Commission authorizing overall rent increase in his apartment building, did not contend that he lacked opportunity to raise certain issues pertaining to rent increase before Rental Accommodations Commission, renter could not properly raise these issues for first time on petition for review. D.C. Code §§ 1-1510, 45-1644(e)(3, 4), 45-1652(b, h). *De Levay v. District of Columbia Rental Accommodations Com.*, 411 A.2d 354, 1980 D.C. App. LEXIS 223 (1980).

Rental Accommodations Commission acted properly in determining that landlord of property that is exempt from rent ceiling limitations of rent control statute may increase rent even though property is not in substantial compliance with District housing regulations. D.C. Code §§ 1-1510(3)(A), 45-1631 to 45-1674, 45-1642 to 45-1652, 45-1642(a)(3), (b), 45-1644(e). *Taylor v. District of Columbia Rental Accommodations Com.*, 404 A.2d 173, 1979 D.C. App. LEXIS 422 (1979).

Superior court rather than District of Columbia Court of Appeals had jurisdiction to review Housing Rent Commission's decision affirming order allowing landlord to increase rents charged at apartment building so as to insure return on investment. D.C. Code §§ 1-147(4), 1-1510, 11-921, 45-1625. *Columbia Realty Venture v. District of Columbia Housing Rent Com.*, 350 A.2d 120, 1975 D.C. App. LEXIS 287 (1975).

Congress, by vesting review of Housing Rent Commission decisions in the superior court, intended that review provisions of the District of Columbia Administrative Procedure Act not apply to the Commission. D.C. Code §§ 1-1510, 45-1621, 45-1625. *Columbia Realty Venture v. District of Columbia Housing Rent Com.*, 350 A.2d 120, 1975 D.C. App. LEXIS 287 (1975).

Congressional action in removing the Housing Rent Commission from scope of review provisions of the District of Columbia Administrative Procedure Act had rational basis in that

court of general jurisdiction would be better able to perform initial review than an appellate court in actions of nature of rent control administration. D.C. Code §§ 1-1510, 45-1621, 45-1625. *Columbia Realty Venture v. District of Columbia Housing Rent Com.*, 350 A.2d 120, 1975 D.C. App. LEXIS 287 (1975).

Action in which landlords sought to have rent control regulation declared invalid was justiciable where Housing Rent Commission was administratively unable to process landlords' petitions for hardship adjustments. D.C. Code §§ 1-1510, 45-1622(a). *Apartment & Office Bldg. Asso. v. Washington*, 343 A.2d 323, 1975 D.C. App. LEXIS 427 (1975).

Liquor licenses and taxes.

Court of Appeals reviews the factual findings of the Alcoholic Beverage Control Board with deference, reversing only if the findings are not based on substantial evidence in the record as a whole. 2461 Corp. v. D.C. Alcoholic Bev. Control Bd., 950 A.2d 50, 2008 D.C. App. LEXIS 263 (2008).

The Court of Appeals was required to examine the record of the first hearing, as well as the second hearing on reconsideration, to determine whether the Alcoholic Beverage Control Board's decision to deny application to transfer license had sufficient evidentiary support. *Tiger Wyk Ltd. v. D.C. Alcoholic Bev. Control Bd.*, 825 A.2d 303, 2003 D.C. App. LEXIS 292 (2003).

Once the Alcohol Beverage Control Board is satisfied that an applicant has satisfied the statutory "appropriateness" qualifications, the Court of Appeals' review of that decision is deferential. *Dupont Circle Citizens Ass'n v. District of Columbia Alcoholic Bev. Control Bd.*, 766 A.2d 59, 2001 D.C. App. LEXIS 18 (2001).

Whether an agency tribunal such as the Alcohol Beverage Control Board commits the disqualification decision entirely to the individual member, or asserts the authority to itself disqualify a member, is a matter over which the court has almost no review authority. *Dupont Circle Citizens Ass'n v. District of Columbia Alcoholic Bev. Control Bd.*, 766 A.2d 59, 2001 D.C. App. LEXIS 18 (2001).

For decision of Alcoholic Beverage Control Board to pass muster under Administrative Procedure Act, Board must make written findings of "basic facts" on all material contested issues, findings, taken together, must rationally lead to conclusions of law which are legally sufficient to support Board's decision, and each basic finding must be supported by evidence sufficient to convince reasonable minds of its adequacy. D.C. Code 1981, § 1-1510(a)(3)(E). *Coumaris v. District of Columbia Alcoholic Beverage Control Bd.*, 660 A.2d 896, 1995 D.C. App. LEXIS 127 (1995).

Court of Appeals must uphold decision of Alcoholic Beverage Control Board if decision is in accordance with law and supported by substantial evidence on record as whole, i.e., such relevant evidence as reasonable mind might accept as adequate to support conclusion. D.C. Code 1981, § 1-1510(a)(3)(E). *Park v. District of Columbia Alcoholic Beverage Control Bd.*, 555 A.2d 1029, 1989 D.C. App. LEXIS 49 (1989).

Substantial evidence established that restaurant was inappropriate for its neighborhood and supported Alcoholic Beverage Control Board's decision to deny renewal of restaurant's liquor license; restaurant patrons had engaged in public urination, drinking and discarding trash in adjacent parking lot, and accosting persons in cars that had stopped outside the premises, restaurant had served patrons who were intoxicated, ejected drunk patrons into neighborhood, and had served at least one under-age individual. D.C. Code 1981, §§ 1-1510(a)(3)(E), (b), 25-115(a), 25-121(a). *K.G.S., Inc. v. District of Columbia Alcoholic Beverage Control Bd.*, 531 A.2d 1001, 1987 D.C. App. LEXIS 454 (1987).

Statute permitting denial of liquor license if establishment in question is not appropriate for its neighborhood applied to renewal of liquor license. D.C. Code 1981, §§ 1-1510(b), 25-115(a), 25-121(a). *K.G.S., Inc. v. District of Columbia Alcoholic Beverage Control Bd.*, 531 A.2d 1001, 1987 D.C. App. LEXIS 454 (1987).

Alcoholic Beverage Control Board's refusal, in liquor license renewal proceeding, to permit restaurant owner to examine for impeachment purposes notes of detective who conducted undercover investigation of drug trafficking activities at restaurant by its employees and patrons under Jencks Act was not reversible error, where testimony by another police officer and several other witnesses corroborated detective's testimony concerning alleged drug activity. D.C. Code 1981, §§ 1-1510(b), 25-115(a); 18 U.S.C. § 3500. *K.G.S., Inc. v. District of Columbia Alcoholic Beverage Control Bd.*, 531 A.2d 1001, 1987 D.C. App. LEXIS 454 (1987).

Conclusions of Alcoholic Beverage Control Board must be derived rationally from findings that are in accord with its governing statute. D.C. Code 1981, § 1-1510(a)(3)(A). *Gerber v. District of Columbia Alcoholic Beverage Control Bd.*, 499 A.2d 1193, 1985 D.C. App. LEXIS 528 (1985).

In reviewing decisions of Alcoholic Beverage Control Board, role of the District of Columbia Court of Appeals is not to substitute its own judgment for that of Board; rather, task is to determine if Board has complied with code provisions pertaining to alcoholic beverages and requirements of District of Columbia Administrative Procedures Act. D.C. Code 1973, §§ 1-1501 et seq., 25-101 et seq. *Le Jimmy, Inc. v. District of Columbia Alcoholic Beverage Con-*

trol Bd., 433 A.2d 1090, 1981 D.C. App. LEXIS 327 (1981).

Claim that Alcoholic Beverage Control Board's decision to grant class B beverage license was invalid because commissioner allegedly lived outside District of Columbia but was serving on Board would not be considered in proceeding on petition for review of Board's order where such claim was not presented to local advisory neighborhood commission at any time during the proceedings. D.C. Code § 1-1510. *Spevak v. District of Columbia Alcoholic Beverage Control Board*, 407 A.2d 549, 1979 D.C. App. LEXIS 449 (1979).

In proceeding on application for issuance of liquor license, District of Columbia Alcoholic Beverage Control Board entered findings which were adequate to address each contested issue, including saturation of liquor licenses, parking in traffic, refuse storage, character of neighborhood, and neighborhood wishes and desires. D.C. Code §§ 1-1509(e), 1-1510, 25-107, 25-115. *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

Substantial evidence supported action of District of Columbia Alcoholic Beverage Control Board in issuing "Class C" liquor license in connection with proposed Irish family restaurant. D.C. Code §§ 1-1509(e), 1-1510(3)(E), 25-111(g). *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

In proceedings on application for issuance of Class C liquor license, District of Columbia Alcoholic Beverage Control Board was not required to define relevant neighborhood as being coextensive with boundaries of advisory neighborhood commission which opposed issuance of license. D.C. Code §§ 1-1509(e), 1-1510(3)(E), 25-111(g). *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

Advisory neighborhood commission had no capacity to seek court review of action of District of Columbia Alcoholic Beverage Control Board in issuing liquor license; area residents who were commission members, however, had standing to initiate such review and to assert rights of commission itself. D.C. Code §§ 1-171a et seq., 1-171i(g), 1-1502(9), 1-1510, 25-111(g), 25-114, 25-115(b); D.C. Code Court of Appeals Rules, rule 15. *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

Examination of record revealed that there was sufficient evidence to sustain finding of Alcoholic Beverage Control Board that the place for which liquor license was to be issued for proposed restaurant was an appropriate one. D.C. Code § 1-1510(3). *Vestry of Grace Parish v. District of Columbia Alcoholic Bever-*

age Control Board, 366 A.2d 1110, 1976 D.C. App. LEXIS 426 (1976).

Record on review established no prejudicial error in Alcoholic Beverage Control Board's compliance with court's prior decision, amounting to substantial compliance with order that Board take further proceedings and enter into record all information which would be relevant and material to statutory criteria for issuance or denial of license and which would be relied upon in any degree by the Board. D.C. Code §§ 1-1510, 25-115(a). *Citizens Asso. of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board*, 305 A.2d 861, 1973 D.C. App. LEXIS 310 (1973).

On petition for review of order of Alcoholic Beverage Control Board granting application for transfer of alcoholic beverage retailer's license, Court of Appeals may not disturb any action of Board in exercise of its statutory powers unless such action is plainly wrong or without support in substantial evidence in administrative record. D.C. Code § 1-1510(3)(E). *Schiffmann v. District of Columbia Alcoholic Beverage Control Board*, 302 A.2d 235, 1973 D.C. App. LEXIS 249 (1973).

Where statement of chairman of Alcoholic Beverage Control Board indicated that Board, or some of its members, obtained and considered, and may have relied upon, information from staff investigative reports not made a matter of record in proceeding which culminated in granting of retail class C liquor license, case would be remanded to Board for further proceedings in which it would be required to enter into the record all information in reports which was relevant and material to statutory criteria for issuance or denial of license and which would be relied upon in any degree by the Board. D.C. Code §§ 1-1510, 25-111. *Citizens Asso. of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board*, 288 A.2d 666, 1972 D.C. App. LEXIS 358 (1972).

Citizens organization had standing to contest issuance of liquor license and could properly contest Alcoholic Beverage Control Board's actions in matter of meeting its statutory obligations procedurally and substantively, notwithstanding that association's opposition to license was based fundamentally upon its position that area of city was already saturated with establishments having liquor licenses, with attendant problems flowing from that condition. D.C. Code §§ 1-1510, 25-111. *Citizens Asso. of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board*, 288 A.2d 666, 1972 D.C. App. LEXIS 358 (1972).

Where there was no indication of reliance by licensing authority on any investigative report, there was statement by one of the members of the authority that it would rely only on the public record, and in summary statement of

facts accompanying decision to grant license, authority made reference only to the evidence produced at the hearing, it could not be assumed that authority improperly considered matters not of record. D.C. Code §§ 1-1510, 11-721(e), 25-115. *Citizens Asso. of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board*, 287 A.2d 87, 1972 D.C. App. LEXIS 330 (1972).

Notwithstanding claim of citizens association that Alcoholic Beverage Control Board erred in not conditioning reissuance of a Class "C" liquor license to restaurant on restoration of valet parking service, findings of Board that there were 20 parking spaces behind building which could be used by customers, that no complaints had ever been received with respect to adequacy of such facilities, and that there was not enough business to justify keeping an employee for purpose of parking customers' vehicles were supported by substantial evidence, and Board's ultimate decision to reissue license to restaurant was within scope of its statutory discretion. D.C. Code §§ 1-1510, 25-106. *Citizens Asso. of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board*, 280 A.2d 309, 1971 D.C. App. LEXIS 184 (1971).

Under statutes, findings of Alcoholic Beverage Control Board of District of Columbia can be overturned by District of Columbia Court of Appeals upon review only if they are without substantial evidence to support them. D.C. Code §§ 1-1510, 25-106. *Sophia's Inc. v. Alcoholic Beverage Control Board*, 268 A.2d 799, 1970 D.C. App. LEXIS 333 (App. 1970).

Parties and standing.

Housing cooperative resident, who wished to participate as party in public hearing on real estate developer's application for a planned unit development (PUD), but was denied that opportunity, was "aggrieved" by denial of party status, as required to support finding that he had standing to petition for review of the denial. *Tiber Island Coop. Homes, Inc. v. D.C. Zoning Comm'n*, 975 A.2d 186, 2009 D.C. App. LEXIS 250 (2009).

Tenants association's close proximity to Planned Unit Development (PUD) alone did not make every use, or change in use, of the PUD injurious to association's members, as would give association standing to maintain petition to review Zoning Commission's order granting university permission to modify PUD. *York Apts. Tenants Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1079, 2004 D.C. App. LEXIS 405 (2004).

Tenants association failed to allege any actual injuries in fact to its members that were not generalized grievances, and thus association did not have standing to petition for review of Zoning Commission order granting univer-

sity permission to modify a previously approved Planned Unit Development, where association claimed that Commission erred in approving modifications, and failed to accord great weight to recommendations of Advisory Neighborhood Commission, and that order would result in loss of new property tax revenue, jobs, and housing; first two claims amounted to nothing more than an allegation of violation of right to have Zoning Commission act in accordance with its rules and regulations, and injuries alleged in third claim were not personal to association. *York Apts. Tenants Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1079, 2004 D.C. App. LEXIS 405 (2004).

Fact that tenants association was not a party in Zoning Commission proceedings that led to issuance of order granting university permission to modify a previously approved Planned Unit Development did not bar association from petitioning Court of Appeals for review of order. *York Apts. Tenants Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1079, 2004 D.C. App. LEXIS 405 (2004).

Board of Zoning Adjustment (BZA) acted arbitrarily and capriciously, in violation of Administrative Procedure Act, by refusing to allow intervention by citizens at hearing to determine whether variance was needed to build recycling center on property zoned "commercial and light manufacturing"; chairwoman first suggested that persons living within 200 feet of property could intervene, but then withdrew suggestion after several citizens announced themselves, and citizens were never given opportunity to express their views. D.C. Code 1981, §§ 1-1501 to 1-1510. *Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1993 D.C. App. LEXIS 318 (1993).

Petitioner who complained that nightclub violated Alcohol Beverage Control Act, related regulations, and his constitutional rights when it excluded him for his failure to present identification proving he was 21 years of age or older did not have statutory or constitutional right to hearing before Alcoholic Beverage Control Board and, therefore, did not have any right of judicial review of Board's decision. D.C. Code 1981, §§ 1-1502(8), 1-1510(a), 11-722, 25-106, 25-121. *Jones v. District of Columbia Alcoholic Beverage Bd.*, 621 A.2d 385, 1993 D.C. App. LEXIS 54 (1993).

Citizens' association had standing to appeal decision not to grant hearing to association prior to either preliminary or final approval of application for construction permit allowing union to build on vacant land in historic area of District of Columbia where asserted injury was clash of proposed design with character of historic district and association's asserted interest in preserving integrity of historic old neighborhood was within zone of interests arguably

protected by Historic Landmark and Historic District Protection Act. D.C. Code 1981, §§ 1-1510, 5-1001 et seq., 5-1007. Dupont Circle Citizens Asso. v. Barry, 455 A.2d 417, 1983 D.C. App. LEXIS 288 (1983).

Citizens' association which was chartered representative of its members was empowered to assert economic and aesthetic injuries claimed by its members for purposes of establishing standing to appeal decision not to grant hearing to association prior to either preliminary or final approval of application for construction permit allowing union to build on vacant land in historic area of District of Columbia. D.C. Code 1981, § 1-1510. Dupont Circle Citizens Asso. v. Barry, 455 A.2d 417, 1983 D.C. App. LEXIS 288 (1983).

Intervenors, who successfully challenged validity of initiative petition for Board of Elections and Ethics, had standing to intervene in proponent's petition for review and advance the arguments in court that they had lost before the Board. Court of Appeals, Rule 15(g); D.C. Code 1978 Supp. § 1-1108(p)(2). Dankman v. District of Columbia Bd. of Elections & Ethics, 443 A.2d 507, 1981 D.C. App. LEXIS 418 (1981).

Parties who successfully challenged validity of initiative petition before Board of Elections and Ethics did not prejudice their review rights by docketing separately the arguments they lost before the Board rather than presenting all their arguments in proponent's petition for review in which they duly intervened. Dankman v. District of Columbia Bd. of Elections & Ethics, 443 A.2d 507, 1981 D.C. App. LEXIS 418 (1981).

Presumptions and burden of proof.

To insure that judicial review can be meaningful, the Public Service Commission (PSC) bears burden to fully and clearly explain its orders; the burden then shifts to the petitioner challenging the PSC order to clearly and convincingly demonstrate that the decision was unreasonable. Office of the People's Counsel v. PSC of D.C., 889 A.2d 1003, 2006 D.C. App. LEXIS 1 (2006).

Where an initial factual determination is made by an administrative agency acting in a non-adjudicative enforcement capacity, due process requires that the person whose rights are affected be able to obtain de novo review by a neutral adjudicator; under this de novo review, the enforcement agency determination does not benefit automatically from a presumption in its favor. In re W.M., 851 A.2d 431, 2004 D.C. App. LEXIS 294 (2004), writ of certiorari denied by 543 U.S. 1062, 125 S. Ct. 885, 160 L. Ed. 2d 792, 2005 U.S. LEXIS 27, 73 U.S.L.W. 3398 (2005).

In evaluating workers' compensation claim, there is a presumption that the claim falls

within the coverage of the statute if the claimant provides some evidence of a disability and a workplace condition which has the potential to have caused the disability, and once aggravation is proved, the presumption of compensability will be applied to establish the causal connection necessary to prove a compensable claim, and presumption may be rebutted by evidence specific and comprehensive enough to sever the causal connection. Clark v. District of Columbia Dep't of Empl. Servs., 772 A.2d 198, 2001 D.C. App. LEXIS 102 (2001).

Prisons and prisoners.

District court had subject matter jurisdiction to hear claim by inmates of District of Columbia corrections system that furloughs could not be curtailed by United States Attorney General without compliance with District of Columbia Administrative Procedure Act where such claim involved nucleus of operative facts which was common with that presented in substantive claim against both federal and nonfederal parties that United States Attorney General lacked authority to promulgate guidelines governing furlough programs and Lorton Reformatory. D.C. Code § 1-1501 et seq.; 18 U.S.C. § 1363. Milhouse v. Levi, 548 F.2d 357, 1976 U.S. App. LEXIS 5884 (C.A.D.C. 1976).

Inmate's allegation of violation of prison regulations by Department of Corrections officials could be raised properly in Superior Court as petition for habeas corpus, even though Lorton Regulations Approval Act (LRAA) does not provide for judicial review of prison disciplinary decision under contested case jurisdiction. D.C. Code 1981, §§ 1-1509, 1-1510; D.C. Mun. Regs. title 28, § 500.01 et seq. Walton v. District of Columbia, 670 A.2d 1346, 1996 D.C. App. LEXIS 10 (1996).

Proceeding before prison housing board which resulted in prisoner being transferred to maximum security facility was not a contested case subject to review under the Administrative Procedure Act. D.C. Code 1981, §§ 1-1510(a), 11-722. Singleton v. District of Columbia Dep't of Corrections, 596 A.2d 56, 1991 D.C. App. LEXIS 225 (1991).

Where hearing prior to retransfer of prisoner from mental hospital to correctional institution was judicially mandated review of the equivalent of "agency action," appropriate court inquiry was whether decision to retransfer was arbitrary, capricious, abuse of discretion or without substantial evidence to support it. D.C. Code 1973, § 1-1510. In re Hurt, 437 A.2d 590, 1981 D.C. App. LEXIS 401 (1981).

Professional and occupational regulation.

Erroneous finding by Board of Medicine that Virginia's Board of Medicine revoked physician's license for failure to comply with terms of order warranted remand absent showing that

erroneous finding was unnecessary to District of Columbia Board of Medicine's ruling revoking license to practice medicine. D.C. Code 1981, §§ 1-1510(b), 11-2503(a). *Salama v. District of Columbia Bd. of Medicine*, 578 A.2d 693, 1990 D.C. App. LEXIS 170 (1990).

Evidence that physician's Virginia license was revoked for failure to remain enrolled in residency program satisfying restrictions on reinstatement after conviction for felony did not support finding by District of Columbia Board of Medicine that physician was disciplined in Virginia for practicing healing art in violation of effective order of Virginia Board, and, thus, physician did not perform services beyond scope of Virginia license in violation of District of Columbia code; while physician did practice in District of Columbia after Virginia Board had revoked his license, he had valid, unrestricted district license to do so at time. D.C. Code 1981, §§ 1-1510(a)(3)(E), 2-3305.14(a)(21). *Salama v. District of Columbia Bd. of Medicine*, 578 A.2d 693, 1990 D.C. App. LEXIS 170 (1990).

Department of Consumer and Regulatory Affairs could deny application for registration as professional electrical engineer without examination on basis that petitioner was not engineer of "established and recognized standing" due to lack of specific accomplishments, activities, and honors. D.C. Code 1981, §§ 1-1510(a), 2-2302(4), 2-2308(2)(A)(i-v). *Becker v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 518 A.2d 93, 1986 D.C. App. LEXIS 499 (1986).

Board of Registration for Professional Engineers for Department of Consumer and Regulatory Affairs could deny application for registration as professional electrical engineer without examination on basis that engineer had not been in responsible charge of important engineering work for five years where petitioner sought to satisfy criteria with his own testimony and one paragraph letters of support from several professional engineers along with other material, absent specific objection to Board's revised findings. D.C. Code 1981, §§ 1-1510(a), 2-2302(4), 2-2308(2)(A)(i-v). *Becker v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 518 A.2d 93, 1986 D.C. App. LEXIS 499 (1986).

Head nurse's conflicting statements as to why she had originally signed "control sheet" indicating that she had witnessed nurse properly dispose of demerol but then changed her mind and scratched out her signature affected head nurse's credibility, and thus, Nurses' Examining Board's failure, in proceeding against nurse for unlawful possession of demerol, to permit cross-examination relating to head nurse's prior statements on subject constituted error; however, where substantial evidence independently supported Board's finding that

nurse unlawfully possessed demerol, error was not prejudicial and remand was not required. D.C. Code 1981, §§ 1-1509(b), 1-1510; D.C. Code 1978 Supp. § 2-407. *Arthur v. District of Columbia Nurses' Examining Bd.*, 459 A.2d 141, 1983 D.C. App. LEXIS 347 (1983).

Issuance or denial of a license to practice naturopathy pursuant to Healing Arts Practice Act constituted a "contested case" for purpose of Administrative Procedure Act for which direct review could be had in District of Columbia Court of Appeals. D.C. Code 1981, §§ 1-1502(8), 1-1509(a), 1-1510, 2-1301 et seq. *District of Columbia v. Douglass*, 452 A.2d 329, 1982 D.C. App. LEXIS 464 (1982).

District of Columbia Court of Appeals had exclusive jurisdiction to review denial of application for license to practice naturopathy pursuant to Healing Arts Practice Act and, hence, superior court lacked jurisdiction to review Commission's action by way of suit for declaratory and injunctive relief. D.C. Code 1981, §§ 1-1510, 2-1301 et seq. *District of Columbia v. Douglass*, 452 A.2d 329, 1982 D.C. App. LEXIS 464 (1982).

District of Columbia Court of Appeals' standard of review in disciplinary cases is virtually the same as that which it is to exercise under District of Columbia Administrative Procedure Act. D.C. Code § 1-1510(3)(E). *In re Dwyer*, 399 A.2d 1, 1979 D.C. App. LEXIS 314 (1979).

Court of Appeals did not have jurisdiction to review decision to transfer school employee from temporary position of "supervising director" with department of English to permanent position of "assistant director." D.C. Code §§ 1-1501 et seq., 1-1502(8), (8)(B), 1-1509, 1-1509(a, c, e), 1-1510. *Wells v. District of Columbia Board of Education*, 386 A.2d 703, 1978 D.C. App. LEXIS 380 (1978).

Evidence did not support refusal to issue license to applicant to sell costume jewelry, where only finding relevant to conclusion that applicant was not presently rehabilitated was a finding that he had not been rehabilitated in 1969, when he was last convicted, and where there was other evidence to the effect that applicant had recently discovered a mission, that being counseling narcotics addicts, that he had acquired a skill in handicraft while in prison, and that he had been hired full time to work at a treatment center for narcotics addicts, all of which taken together provided a strong incentive to eschew a life of crime. D.C. Code §§ 1-1510(3)(E), 47-2336, 47-2345(a). *Miller v. District of Columbia Board of Appeals & Review*, 294 A.2d 365, 1972 D.C. App. LEXIS 251 (1972).

Public retirement boards and commissions—In general.

Court may overturn retirement board's decision only if its findings are unsupported by

substantial evidence in record as whole or if it is grounded on faulty legal premise. D.C. Code § 1-1510(1), (3)(E). *Neer v. District of Columbia Police & Firemen's Retirement & Relief Board*, 415 A.2d 523, 1980 D.C. App. LEXIS 295 (1980).

Decisions of retirement board are not excepted from judicial review notwithstanding statute excluding, from definition of "contested case" which may be subject of review, selection or tenure of an officer or employee of the District. D.C. Code §§ 1-1502(8)(B), 1-1510, 4-526, 4-527, 4-533. *Johnson v. Board of Appeals & Review*, 282 A.2d 566, 1971 D.C. App. LEXIS 209 (1971), writ of certiorari denied by 405 U.S. 955, 92 S. Ct. 1175, 31 L. Ed. 2d 232, 1972 U.S. LEXIS 3495 (1972).

— Police and firefighters, public retirement boards and commissions.

The Police and Firefighters Retirement and Relief Board's determination that the position of receptionist, which the Board used to estimate disabled firefighter's retirement annuity, was available to firefighter was supported by substantial evidence, even though firefighter had no experience as a receptionist; one of the receptionist positions did not require any experience. *Bausch v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 855 A.2d 1121, 2004 D.C. App. LEXIS 412 (2004).

The Police and Firefighters Retirement and Relief Board's determination that the positions of library technician and library aide, which the Board used to estimate disabled firefighter's retirement annuity, were available to firefighter was not supported by substantial evidence; the library positions required "occasional stooping," and medical examiner opined that firefighter did not have the physical capacity to perform a job that required stooping up to a third of the time on a regular basis. *Bausch v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 855 A.2d 1121, 2004 D.C. App. LEXIS 412 (2004).

The Police and Firefighters Retirement and Relief Board's determination that the position of shopkeeper, which the Board used to estimate disabled firefighter's retirement annuity, was available to firefighter was not supported by substantial evidence; jobs relied on by the Board were required to be listed in the open labor market in the area for the employment to be deemed available, and the Board relied on a listing for a part-time shopkeeper and doubled the salary. *Bausch v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 855 A.2d 1121, 2004 D.C. App. LEXIS 412 (2004).

Remand for a redetermination of disabled firefighter's retirement annuity was required, where the Police and Firefighters Retirement and Relief Board relied on three employment listings that were unavailable to firefighter or

were positions that firefighter was not capable of doing when it determined the income that firefighter was capable of earning and his annuity. *Bausch v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 855 A.2d 1121, 2004 D.C. App. LEXIS 412 (2004).

The Court of Appeals reviews a decision of the Police and Firefighters' Retirement and Relief Board to ensure that it (1) made findings of fact on each material, contested factual issue, (2) based those findings on substantial evidence, and (3) drew conclusions of law which followed rationally from the findings. *Bausch v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 855 A.2d 1121, 2004 D.C. App. LEXIS 412 (2004).

Court of Appeals' review of administrative decisions of the Police and Firefighters' Retirement and Relief Board is limited to ensuring that the Board made findings of fact on each material, contested factual issue, based those findings on substantial evidence, and drew conclusions of law which followed rationally from the findings. *Beckman v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

If supported by substantial evidence, Court of Appeals must accept the Police and Firefighters' Retirement and Relief Board's factual findings, even if Court might have reached a different result if acting as fact finder; in applying this substantial evidence test, Court may not substitute its judgment for that of the Board. *Beckman v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

Determination of whether an injury or disabling condition was incurred in the performance of duty is a factual question, for purposes of determining police and firefighters' entitlement to retirement disability benefits for injuries incurred in performance of duty; however, a finding on this issue will be upheld only if supported by substantial evidence. *Beckman v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 810 A.2d 377, 2002 D.C. App. LEXIS 598 (2002).

In reviewing a decision of the Police and Firefighters' Retirement and Relief Board, the Court of Appeals may reverse only if the Board's findings are unsupported by substantial evidence in the record or if the decision is grounded on a mistaken legal premise or manifests an abuse of discretion. *Alexander v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 783 A.2d 155, 2001 D.C. App. LEXIS 224 (2001).

Judicial review must be deferential to the Police and Firefighters' Retirement and Relief Board, and the Board's decision should be affirmed when a consideration of the record as a whole indicates relevant evidence that reasonably support the findings, and the Board has made a correct interpretation of the governing

law. *Alexander v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 783 A.2d 155, 2001 D.C. App. LEXIS 224 (2001).

Under District of Columbia Administrative Procedure Act, Court of Appeals' review of administrative decisions such as those by police retirement board is limited; Court of Appeals may not substitute its judgment for that of board. D.C. Code 1981, § 1-1501 et seq. *Britton v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, 681 A.2d 1152, 1996 D.C. App. LEXIS 166 (1996).

Court of Appeals' review of decisions of police retirement board is limited to insuring that board made findings of fact on each material, contested factual issue, based its findings on substantial evidence, and drew conclusions of law which followed rationally from the findings. D.C. Code 1981, § 1-1501 et seq. *Britton v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, 681 A.2d 1152, 1996 D.C. App. LEXIS 166 (1996).

To reverse decision of Police and Firefighters' Retirement and Relief Board on ground that Board's findings of fact and conclusions of law are unsupported by substantial evidence in record, Court of Appeals must be persuaded that Board's decision in particular case was not supported by and in accordance with the reliable, probative, and substantial evidence. D.C. Code 1981, § 1-1509(e). *Allen v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, 528 A.2d 1225, 1987 D.C. App. LEXIS 389 (1987).

Inquiry as to whether findings of fact and conclusions of law of Police and Firefighters' Retirement and Relief Board is not supported by substantial evidence in the record entails determination whether Board failed to state findings of fact on each material, contested factual issue, base such findings on substantial evidence, or draw conclusions of law which follow rationally from the findings. *Allen v. District of Columbia Police & Firefighters' Retirement & Relief Bd.*, 528 A.2d 1225, 1987 D.C. App. LEXIS 389 (1987).

Although Court of Appeals defers to any reasonable construction adopted by Police and Firefighters Retirement and Relief Board of regulatory statute Board is charged with enforcing, Court is required to decide all relevant questions of law when presented and to be ultimate interpreter of statutory provisions from which Board, as creature of legislature, derives its powers. D.C. Code 1981, § 1-1510. *Ridge v. Police & Firefighters Retirement & Relief Bd.*, 511 A.2d 418, 1986 D.C. App. LEXIS 362 (1986).

Court of Appeals may not substitute its judgment for that of Police and Firefighters' Retirement Relief Board on decision whether to terminate disability annuity. D.C. Code 1981, §§ 1-1510, 4-620(a). *McNeal v. Police & Fire-*

fighters' Retirement & Relief Bd., 488 A.2d 931, 1985 D.C. App. LEXIS 323 (1985).

Court of Appeals may reject factual finding of Police and Firemen's Retirement Relief Board only where it is unsupported by substantial evidence in record as a whole. *Kirkwood v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, 468 A.2d 965, 1983 D.C. App. LEXIS 517 (1983).

Death of former city policeman following submission of challenge to conclusions of Police and Firemen's Retirement and Relief Board that permanent employment disability was not aggravated by his performance did not moot the case in view of the economic effect it would have one way or the other on petitioner's estate. D.C. Code 1973, § 4-527(1, 2). *Liberty v. District of Columbia Police & Firemen's Retirement & Relief Bd.*, 452 A.2d 1187, 1982 D.C. App. LEXIS 491 (1982).

In reviewing decisions of police trial board, trial court's function is to determine if requirements of procedural due process are met, and whether decision of trial board is supported by substantial evidence on whole record. D.C. Code 1981, §§ 1-1501 et seq., 1-1510. *Kegley v. District of Columbia*, 440 A.2d 1013, 1982 D.C. App. LEXIS 294 (1982).

Superior court clearly erred in reviewing decision of metropolitan police department police trial board dismissing officer from police force where court did not apply standard of review similar to that embodied in District of Columbia Administrative Procedure Act but heard additional evidence in case and plainly substituted its judgment for that of trial board. D.C. Code 1981, §§ 1-1501 et seq., 1-1510. *Kegley v. District of Columbia*, 440 A.2d 1013, 1982 D.C. App. LEXIS 294 (1982).

When decision of superior court reviewing action of police trial board is appealed, Court of Appeals uses scope of review employed in reviewing contested cases, i.e., a review of administrative record to determine if there has been procedural error, if there is substantial evidence in record to support action of trial board, or if action is in some manner otherwise arbitrary, capricious or abuse of discretion. D.C. Code 1981, §§ 1-1501 et seq., 1-1510. *Kegley v. District of Columbia*, 440 A.2d 1013, 1982 D.C. App. LEXIS 294 (1982).

In proceeding wherein Police and Firemen's Retirement and Relief Board ruled that police officer, who assertedly suffered back injury while attempting to restrain a prisoner, was not eligible for disability retirement, Board's findings to effect that officer's physical restrictions were slight and that his failure to perform useful services was due to his own motivation and not because he was unable to do so were supported by substantial evidence. D.C. Code §§ 1-1510(3)(E), 4-527(1). *Proulx v. Police &*

Firemen's Retirement & Relief Bd., 430 A.2d 34, 1981 D.C. App. LEXIS 258 (1981).

In proceeding wherein Police and Firemen's Retirement and Relief Board ruled that police officer, who assertedly suffered back injury while attempting to restrain a prisoner, was not eligible for disability retirement, Board's finding to effect that officer was not permanently disabled in the grade or class, which had been last occupied by him and which was a light duty position, was supported by substantial evidence. D.C. Code §§ 1-1510(3)(E), 4-527(1). *Proulx v. Police & Firemen's Retirement & Relief Bd.*, 430 A.2d 34, 1981 D.C. App. LEXIS 258 (1981).

Police and Firemen's Retirement and Relief Board committed reversible error by placing upon former police officer the burden of demonstrating with reasonable medical certainty that officer was not recovered from his disability, in that Board had burden of demonstrating with substantial evidence that former officer had recovered. D.C. Code §§ 1-1501, 1-1509(b), 1-1510, 4-533. *Kea v. Police & Firemen's Retirement & Relief Bd.*, 429 A.2d 174, 1981 D.C. App. LEXIS 245 (1981).

In Court of Appeals' review of retirement benefit cases, sufficiency of evidence to support Police and Firemen's Retirement and Relief Board's findings is not to be measured under clear preponderance of evidence standard. *Echard v. Police & Firemen's Retirement & Relief Board*, 422 A.2d 1275, 1980 D.C. App. LEXIS 382 (1980).

Findings by Police and Firemen's Retirement and Relief Board, in connection with decision to retire patrolman, that police duties "did not play any part" or "played no part" in patrolman's coronary artery disease and that family history was "the most significant factor" were unsupported by substantial evidence. D.C. Code §§ 1-1510, 4-526, 4-527, 11-722. *Liberty v. Police & Firemen's Retirement & Relief Bd.*, 410 A.2d 191, 1979 D.C. App. LEXIS 533 (1979).

Where substantial doubt existed as to whether the Police and Firemen's Retirement and Relief Board, which determined that patrolman should be retired because of coronary artery disease causing disability not incurred or aggravated by performance of duty, would have reached its conclusion of law and decision without the unsupported findings that "family histories" comprise "the most significant factor" in his disease and that police duties "played no part," the case had to be remanded for further proceedings. D.C. Code §§ 1-1510, 4-526, 4-527(1, 2). *Liberty v. Police & Firemen's Retirement & Relief Bd.*, 410 A.2d 191, 1979 D.C. App. LEXIS 533 (1979).

In police or fire retirement benefit cases, the test for resolving evidentiary attacks upon agency findings is whether the challenged find-

ings are supported by substantial evidence rather than by a clear preponderance of evidence. D.C. Code § 1-1510. *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Board*, 384 A.2d 29, 1978 D.C. App. LEXIS 493 (1978).

Police and Firemen's Retirement and Relief Board finding that petitioner, who was in a serious automobile accident while on duty and was taken to hospital where he was treated and released, and who almost three years later, while off duty arose from a couch in his home and fell to the floor, and who due to back pain was unable to resume normal police duties, was disabled other than in the performance of duty was unsupported by substantial evidence. D.C. Code §§ 1-1510, 4-526, 4-527(1, 2). *Arellano v. District of Columbia Police & Firemen's Retirement & Relief Board*, 384 A.2d 29, 1978 D.C. App. LEXIS 493 (1978).

At disability hearing before Police and Firemen's Retirement and Relief Board at which Board needed to determine not only whether police officer was permanently disabled but also whether the disability was caused or aggravated in the line of duty, testimony bearing on relationship between officer's depressive mental state and his service-related injuries was essential to proper assessment of question of causation and, therefore, it was error for Retirement Board hearing officer to refuse to allow either testimony about the police officer's physical ailments or cross-examination of witnesses as to the officer's claimed physical injuries. D.C. Code §§ 1-1509(b), 1-1510(3)(D), 4-526, 4-527. *Kirven v. Police & Firemen's Retirement & Relief Board*, 379 A.2d 1186, 1977 D.C. App. LEXIS 282 (1977).

Fact that District of Columbia Police and Firemen's Retirement and Relief Board failed to make findings of fact with respect to claim of member of police department that she was disabled due to regulations requiring her to be available to do all forms of police work, was not fatal to board's decision denying disability retirement benefits, in view of fact that evidentiary showing concerning such police regulations was irrelevant in that police department was bound to follow congressional scheme set forth in Police and Firemen's Retirement and Disability Act which prevented department from assigning injured member of police department to positions more physically vigorous than her last class of position entailed. D.C. Code §§ 1-1509(e), 1-1510(3)(E), 4-521 to 4-535, 4-521(2), 4-526. *Jones v. Police & Firemen's Retirement & Relief Board*, 375 A.2d 1, 1977 D.C. App. LEXIS 446 (1977).

Factual determinations of police and firemen's retirement relief board must not be set aside unless unsupported by substantial evidence. D.C. Code § 1-1510(3)(E). *Morgan v. District of Columbia Police & Firemen's Retirement*

ment & Relief Board, 370 A.2d 1322, 1977 D.C. App. LEXIS 427 (1977).

Evidence, in police officer's action challenging Police and Firemen's Retirement and Relief Board's order finding him unfit for civil service on grounds of nonservice connected disability and involuntarily separating him without pension, supported Board's findings that officer was permanently disabled and that ultimate disability was psychological in nature. D.C. Code §§ 1-1510, 4-527, 4-529, 11-722. *Stoner v. District of Columbia Police & Firemen's Retirement & Relief Board*, 368 A.2d 524, 1977 D.C. App. LEXIS 405 (1977).

Evidence sustained findings of Police and Firemen's Retirement Board that disabilities of retired officers of United States Park Service were not caused or aggravated by service. D.C. Code §§ 1-1501 to 1-1510, 1-1510(3)(E), 4-527, 4-527(2). *Johnson v. Board of Appeals & Review*, 282 A.2d 566, 1971 D.C. App. LEXIS 209 (1971), writ of certiorari denied by 405 U.S. 955, 92 S. Ct. 1175, 31 L. Ed. 2d 232, 1972 U.S. LEXIS 3495 (1972).

Public service commission and utility regulation.

Court of Appeals had jurisdiction to review Public Service Commission's decision to deny public gas utility's proposal to close service center, which made it harder for customers to pay their gas bills; utility's challenges on appeal, including that the Commission acted without authority, impermissibly interfered in utility's management decisions regarding its operations, denied it procedural safeguards, and reached conclusions unsupported by substantial evidence, presented questions of law rather than public policy. *Wash. Gas Light Co. v. D.C. PSC*, 856 A.2d 1098, 2004 D.C. App. LEXIS 418 (2004).

The party seeking to reverse an order of the Public Service Commission bears the burden of demonstrating that the order is unreasonable, arbitrary, or capricious by demonstrating clearly and convincingly a fatal flaw in the action taken. *Wash. Gas Light Co. v. D.C. PSC*, 856 A.2d 1098, 2004 D.C. App. LEXIS 418 (2004).

To facilitate judicial review of its orders, the Public Service Commission must explain fully and carefully the methods by which, and the purposes for which, it has chosen to act, as well as its assessment of the consequences of its orders for the character and future development of the industry. *Wash. Gas Light Co. v. D.C. PSC*, 856 A.2d 1098, 2004 D.C. App. LEXIS 418 (2004).

Public policy decisions made by the Public Service Commission are beyond both the jurisdiction and the competence of a reviewing court. *Wash. Gas Light Co. v. D.C. PSC*, 856 A.2d 1098, 2004 D.C. App. LEXIS 418 (2004).

In reviewing a Public Service Commission order, the court must determine whether its overall effect is just and reasonable and whether the Commission has respected procedural requirements, has made findings based on substantial evidence, and has applied the correct legal standards to its substantive deliberations. *Wash. Gas Light Co. v. D.C. PSC*, 856 A.2d 1098, 2004 D.C. App. LEXIS 418 (2004).

To ensure that judicial review of a Public Service Commission (PSC) order can be meaningful, Court of Appeals requires that the PSC explain its actions fully and clearly. Office of the People's Counsel v. PSC, 799 A.2d 376, 2002 D.C. App. LEXIS 297 (2002).

Court of Appeals may not substitute its judgment for that of Public Service Commission (PSC) in fulfilling its ratemaking responsibilities, and Court's review of utility rate decisions by Commission is narrowest judicial review in field of administrative law. D.C. Code 1981, § 43-906. *Watergate E. v. Public Serv. Comm'n*, 665 A.2d 943, 1995 D.C. App. LEXIS 180 (1995).

Apparent acquiescence of the Public Service Commission (PSC) in electric company's failure to obtain PSC approval in advance of construction of combustion turbines, even if such approval was statutorily required, did not rise to the level of prejudicial error, given the PSC's thorough examination of the reasonableness of the construction of the turbines and its examination of the reasonableness of electric company's cost recovery for the turbines in rate case. D.C. Code 1981, §§ 1-1510(b), 43-1002. Office of People's Counsel v. Public Service Com., 610 A.2d 240, 1992 D.C. App. LEXIS 155 (1992).

General principle precluding a utility from charging higher rates in the future in order to recoup past losses did not preclude imposition of a surcharge to recover revenues lost by electric utility while rate order, which was found to be arbitrary and unreasonable, was in effect; losses occurred after fair rate of return had been determined and lost revenues were shown, by abundant evidence, to have been result of arbitrary and unreasonable rulings of Public Service Commission; imposition of surcharge to recoup past losses would not constitute retroactive rate making. D.C. Code §§ 1-1510(1), 43-301, 43-401, 43-411. *Potomac Electric Power Co. v. Public Service Com.*, 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Issuance of subsequent rate order did not render moot and impractical question of relief in proceedings challenging prior rate order where the utility was never allowed to recoup revenue losses experienced as result of the prior order, which was found to be arbitrary and unreasonable; even if prior order were technically moot, it presented issues of a continuing nature. D.C. Code §§ 1-1510(1), 43-705. *Potomac Electric Power Co. v. Public Service*

Com., 380 A.2d 126, 1977 D.C. App. LEXIS 268 (1977).

Administrative Procedure Act was intended to apply to the Public Service Commission. D.C. Code § 1-1501 et seq. Chesapeake & Potomac Tel. Co. v. Public Service Com., 339 A.2d 710, 1975 D.C. App. LEXIS 397 (1975).

Conclusion that procedural requirements of Administrative Procedure Act were applicable to Public Service Commission was not weakened by statute which provides, *inter alia*, that District of Columbia Court of Appeals has jurisdiction to review orders and decisions of any agency of the District in accordance with Administrative Procedure Act, and may review orders or decisions of the Commission in accordance with Commission's organic act. D.C. Code §§ 1-1501 et seq., 11-722, 43-101 to 43-1007. Chesapeake & Potomac Tel. Co. v. Public Service Com., 339 A.2d 710, 1975 D.C. App. LEXIS 397 (1975).

Decision of Public Service Commission in telephone rate proceeding to furnish transcripts to intervenors at telephone company's expense did not constitute a proper exercise of Commission's delegated powers to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it, since any procedure established by the Commission must conform with the minimum requirements set forth in Administrative Procedure Act, and since Commissions rule that transcripts be furnished to intervenors at telephone company's expense was a mere nullity because it contravened express language of Administrative Procedure Act. D.C. Code §§ 1-1501, 1-1509(c), 43-402, 43-1003. Chesapeake & Potomac Tel. Co. v. Public Service Com., 339 A.2d 710, 1975 D.C. App. LEXIS 397 (1975).

Public service vehicles and taxi licensing.

Under District of Columbia law, exclusive route for judicial review of motor vehicle operator's permit suspension was to District of Columbia Court of Appeals. D.C. Code 1981, §§ 1-1501 et seq., 1-1509, 1-1510(a), 40-302(a). Johnson v. Cumis Ins. Soc., 624 F. Supp. 1170, 1986 U.S. Dist. LEXIS 30443 (1986).

Taxicab Commission failed to follow its own regulations in imposing fine for loitering, and thus improperly imposed fine on driver, where hearing officer did not issue anything purporting to be proposed decision, no notice was given of right to file written exceptions, chairperson did not appoint panel to hear argument and adopt proposed order or issue its own, and notice was not given of right to appeal to full panel. D.C. Code 1981, §§ 1-1510(a), 40-1709.1(c). Macauley v. District of Columbia Taxicab Comm'n, 623 A.2d 1207, 1993 D.C. App. LEXIS 108 (1993).

Taxicab Commission's emergency order increasing rates did not arise from contested case

and thus was not subject to judicial review; even if contesting party did not receive trial-type hearing to which it was entitled, order involved policy decision directed toward general public rather than adjudication of rights of specific parties. D.C. Code 1981, § 1-1502(8). Communication Workers of America, Local 2336 v. District of Columbia Taxicab Com., 542 A.2d 1221, 1988 D.C. App. LEXIS 130 (1988).

Court of Appeals had jurisdiction to hear petition for review of ruling by Hackers' License Appeal Board because it arose from "contested case" as that term is defined in Administrative Procedure Act. D.C. Code 1981, §§ 1-1502(8), 1-1510(a). Allen v. District of Columbia Hackers' License Appeal Bd., 471 A.2d 271, 1984 D.C. App. LEXIS 305 (1984).

Especially where charged hacker is not represented by counsel in hacker's license suspension proceedings, Hackers' License Appeal Board must fashion procedures to insure that litigant is aware of full panoply of procedural rights which are his due. D.C. Code §§ 1-1509(a, b), 1-1510. Babazadeh v. District of Columbia Hackers' License Appeal Board, 390 A.2d 1004, 1978 D.C. App. LEXIS 554 (1978).

Neither subsequently enacted Administrative Procedure Act nor District of Columbia Court Reform and Criminal Procedure Act of 1970 changed method of seeking review as provided in statute making review in safety responsibility cases discretionary on application for allowance of appeal, and thus, the Court of Appeals was not required to accept safety responsibility case on petition for review as matter of right from contested case determination under Administrative Procedure Act, but rather, review was discretionary on application for allowance of appeal. D.C. Code §§ 1-1510, 17-306, 40-417 et seq., 40-420, 40-437; District of Columbia Court Reform and Criminal Procedure Act of 1970, 84 Stat. 473. Thomas v. District of Columbia Board of Appeals & Review, 355 A.2d 789, 1976 D.C. App. LEXIS 523 (1976).

Uninsured motorist who posted the administratively required security following involvement in automobile mishap and who did not seek review of order by the Commissioner of the District of Columbia could nevertheless be considered a person suffering a legal wrong, or adversely affected or aggrieved by order or decision of Commissioner within meaning of District of Columbia Administrative Procedure Act. D.C. Code §§ 1-1510, 40-420. Smith v. Murphy, 294 A.2d 357, 1972 D.C. App. LEXIS 241 (1972).

To hold that the likelihood of failure to succeed at administrative level justified resort to court of general jurisdiction would frustrate specific mandate of Congress giving court discretion as to whether to review adverse orders of the Commissioner under the District of Co-

lumbia Motor Vehicle Safety Responsibility Act and providing that such review, if allowed, be on an administrative record and as provided by District of Columbia Administrative Procedure Act. D.C. Code §§ 1-1501 to 1-1510, 11-721, 40-420; D.C. Code Court of Appeals Rules, rules 15-20. *Smith v. Murphy*, 294 A.2d 357, 1972 D.C. App. LEXIS 241 (1972).

Hackers' License Appeal Board may not suspend or revoke hackers' license unless it concludes after hearing and upon appropriate findings as required by Administrative Procedure Act that valid regulation promulgated by District of Columbia council under statute prescribing suspension or revocation has been violated, or unless it can show on record reliable, probative, and substantial evidence supporting its own conclusion that suspension or revocation of the particular license will be "in interest of public decency" or "necessary for protection of life, limbs, health, comfort and quiet of citizens." D.C. Code §§ 1-1501 to 1-1510, 1-1509, 1-1509(e), 47-2331(d), 47-2345(a). *Proctor v. Hackers' Board*, 268 A.2d 267, 1970 D.C. App. LEXIS 321 (App. 1970).

Exclusive jurisdiction conferred by Juvenile Court Act on a District of Columbia juvenile court in judicial proceedings is not jurisdictional bar to administrative action of suspending motor vehicle operator's permit of 17-year-old driver. D.C. Code §§ 1-1501 et seq., 1-1510, 11-742, 11-1551, 16-2308, 40-302(a). *Murphy v. Heath*, 256 A.2d 421, 1969 D.C. App. LEXIS 291 (App. 1969).

Public welfare and social security.

Even if District of Columbia officials violated Administrative Procedure Act in closing public health clinic, injunctive relief was inappropriate after funding which would have allowed clinic to remain open expired. D.C. Code 1978 Supp. §§ 1-1501 to 1-1510. *Spivey v. Barry*, 665 F.2d 1222, 1981 U.S. App. LEXIS 17915 (C.A.D.C. 1981).

On appeal from order of district court compelling District of Columbia officials to reopen public health clinic which had been closed, interests served by abstention doctrine did not require Court of Appeals to delay further resolution of dispute, even if abstention may have been mandated by uncertainty of local law issue or by difficult question of local law bearing on policy problems of substantial public import, where decision to abstain on appeal would create greater potential for disruption of local health care policy. D.C. Code 1978 Supp. §§ 1-171 to 1-171r, 1-1501 to 1-1510, 32-322. *Spivey v. Barry*, 665 F.2d 1222, 1981 U.S. App. LEXIS 17915 (C.A.D.C. 1981).

Issue of whether closing of public health clinic by District of Columbia officials violated Administrative Procedure Act was rendered moot, given that clinic was to be closed in any

event at beginning of fiscal year 1981 when its funding expired, since Court of Appeals could not require District officials to implement sounder interim policy once interim period ended. D.C. Code 1978 Supp. § 1-1510(3)(A). *Spivey v. Barry*, 665 F.2d 1222, 1981 U.S. App. LEXIS 17915 (C.A.D.C. 1981).

Substantial evidence supported determination by Department on Disability Services (DDS) that ward, who had previously been removed from her parents' home following allegations of abuse and neglect, was not mentally retarded, when Child and Family Services Agency (CFSA) filed voluntary applications seeking admission of ward into a residential facility under the Mentally Retarded Citizens Constitutional Rights and Dignity Act; though ward had significant issues including pervasive developmental disorder (PDD), none of the psychological evaluations indicated that ward was mentally retarded or otherwise had subaverage intellectual functioning. *In re A.T.*, 10 A.3d 127, 2010 D.C. App. LEXIS 728 (2010).

Issue of authority of a District of Columbia Department of Health (DOH) administrative law judge (ALJ) to order the important remedy of readmission of a patient who was discharged from Medicaid- and Medicare-certified nursing facility upon faulty notice involved overarching issues important to resolution of an entire class of future cases, such that Court of Appeals would consider issue, even if issue was moot because all that patient sought from ALJ was a declaration of the "right" to be readmitted to facility in the future. *Paschall v. D.C. Dep't of Health*, 871 A.2d 463, 2005 D.C. App. LEXIS 151 (2005).

Though regulation of District of Columbia council reducing and, in some cases, terminating payments in form of general public assistance and aid to families with dependent children to those recipients with outside income and resources was invalid for failure of council to meet notice requirements, upon enactment of remedial legislation, petitioners, who accepted remedial legislation and made no further claims stemming from new law even though reduced payments were same as under invalidated regulation, were not entitled to retroactive, supplemental payments encompassing period between effective date of invalidated regulation and effective date of remedial law. D.C. Code §§ 1-1510, 11-722. *Archer v. District of Columbia Dep't of Human Resources*, 375 A.2d 523, 1977 D.C. App. LEXIS 349 (1977).

Where hearing request was bottomed on an attack on validity of a legislative enactment by District of Columbia council respecting payments of aid to families with dependent children, Department of Human Resources had no alternative but to comply with provisions of enactment. D.C. Code §§ 1-1510, 11-722. *Ar-*

cher v. District of Columbia Dep't of Human Resources, 375 A.2d 523, 1977 D.C. App. LEXIS 349 (1977).

In construing regulation of District of Columbia council respecting payments of aid to families with dependent children, it would hardly be sensible for council to state, in effect, that Department of Human Resources should reduce payments in accordance with its new regulation but, at same time, not reduce them if a claimant requests a hearing before agency to determine whether council enacted a valid regulation, something the agency had no power to do. D.C. Code §§ 1-1510, 11-722. Archer v. District of Columbia Dep't of Human Resources, 375 A.2d 523, 1977 D.C. App. LEXIS 349 (1977).

District of Columbia Department of Human Resources had no power to invalidate a regulation which had been enacted by District of Columbia council and which operated to reduce and, in some cases, to terminate payments in form of aid to families with dependent children to those recipients with outside income and resources. D.C. Code §§ 1-1510, 11-722. Archer v. District of Columbia Dep't of Human Resources, 375 A.2d 523, 1977 D.C. App. LEXIS 349 (1977).

Regulation of District of Columbia council reducing and, in some cases, terminating payments in form of general public assistance and aid to families with dependent children to those recipients with outside income and resources was invalid for failure of council to meet statutory notice requirements. D.C. Code §§ 1-1510, 11-722. Archer v. District of Columbia Dep't of Human Resources, 375 A.2d 523, 1977 D.C. App. LEXIS 349 (1977).

Petitioner had a "fair hearing" on its petition challenging validity of District of Columbia council regulation reducing and, in some cases, terminating payments in form of aid to families with dependent children to those recipients without outside income and resources to extent that Department of Human Resources ruled that it lacked authority to invalidate regulation. D.C. Code §§ 1-1510, 11-722. Archer v. District of Columbia Dep't of Human Resources, 375 A.2d 523, 1977 D.C. App. LEXIS 349 (1977).

District of Columbia Department of Human Resources regulation concerning determination of income for purpose of computing aid to families with dependent children and stating that all income must be actually available to the applicant or recipient for his current use cannot be interpreted as covering only income available for current use, particularly in view of other regulations stating that voluntary deductions for future benefits are not to be excluded from gross income. D.C. Code §§ 1-1510, 3-202 et seq.; Social Security Act, § 401 et seq., 42 U.S.C. § 601 et seq. Harris v. District of Colum-

bia Dep't of Human Resources, Social Rehabilitation Administration, 304 A.2d 868, 1973 D.C. App. LEXIS 293 (1973).

Reductions in income of AFDC recipients, which in one case was caused by garnishment of wages because of a default judgment against recipient who signed note as an accommodation maker and which in the other case resulted from recipient's voluntary assignment of wages to repay debt owed to credit union, were the result of recipients' voluntary acts of incurring the debts and were not mandatory deductions for purpose of determining the entitlement of recipients to AFDC benefits. D.C. Code §§ 1-1510, 3-202 et seq.; Social Security Act, § 401 et seq., 42 U.S.C. § 601 et seq. Harris v. District of Columbia Dep't of Human Resources, Social Rehabilitation Administration, 304 A.2d 868, 1973 D.C. App. LEXIS 293 (1973).

Decision of Department of Human Resources to subtract resources of public assistance recipients from 75% rather than 100% of monthly minimum subsistence need, as established under February 1970 cost of living, constituted rule-making within meaning of District of Columbia Administrative Procedure Act, and Department was required under the Act to give public notice before adopting rule. Social Security Act, §§ 1 et seq., 2, 401 et seq., 402, 402(a)(23), 1001 et seq., 1002, 1401 et seq., 1402 as amended 42 U.S.C. §§ 301 et seq., 302, 601 et seq., 602, 602(a)(23), 1201 et seq., 1202, 1351 et seq., 1352; Reorganization Plan No. 3, § 205(a), D.C. Code Title 1, Appendix I; D.C. Code §§ 1-503, 1-1505(a), 1-1510. Junghans v. Department of Human Resources, 289 A.2d 17, 1972 D.C. App. LEXIS 356 (1972).

Under the Social Security Act and the District of Columbia regulations promulgated thereunder, 17-year-old mother, who was a full time student in high school and also employed in a "stay-in-school" program, was not entitled to have all of her income disregarded in determining amount of benefits to which she and her son were entitled under Aid to Families with Dependent Children, but rather was entitled to have first \$30 of her income and one-third of the remainder disregarded. D.C. Code §§ 1-1510, 3-202 et seq.; Social Security Act, § 401 et seq., 42 U.S.C. § 601 et seq. Daniels v. Thompson, 269 A.2d 437, 1970 D.C. App. LEXIS 343 (App. 1970).

In establishing standard of need and determining level of benefits to be paid to a mother receiving public assistance under Aid to Families with Dependent Children, Congress has left to the states a great deal of discretion. D.C. Code §§ 1-1510, 3-202 et seq.; Social Security Act, § 401 et seq., 42 U.S.C. § 601 et seq. Daniels v. Thompson, 269 A.2d 437, 1970 D.C. App. LEXIS 343 (App. 1970).

States' or District of Columbia's discretion in establishing standard of need and determining

level of benefits to be paid to mothers receiving public assistance under Aid to Families with Dependent Children is limited to fixing an amount needed by variously composed recipient units and to determining how much the state or District of Columbia is able to pay; thus, at least in its role of determining standard of need and level of benefits, a determination of what income is to be regarded and what disregarded as a resource available to the recipient unit is not within the district's discretion. D.C. Code §§ 1-1510, 3-202 et seq.; Social Security Act, § 401 et seq., 42 U.S.C. § 601 et seq. *Daniels v. Thompson*, 269 A.2d 437, 1970 D.C. App. LEXIS 343 (App. 1970).

To extent that Congress has dictated terms and conditions of AFDC payments, District of Columbia is required to administer the program accordingly. D.C. Code §§ 1-1510, 3-202 et seq.; Social Security Act, § 401 et seq., 42 U.S.C. § 601 et seq. *Daniels v. Thompson*, 269 A.2d 437, 1970 D.C. App. LEXIS 343 (App. 1970).

Questions of law and fact, generally.

Even if an agency charged with implementing a regulation perceives it to be deficient or imperfect, it is not the agency's or the Court of Appeals' prerogative to rewrite the statute or regulation or to supply omissions in it in order to make it more fair. *Chagnon v. D.C. Bd. of Zoning Adjustment*, 844 A.2d 345, 2004 D.C. App. LEXIS 66 (2004).

The proper judge of credibility is the hearing examiner and an appellate court cannot substitute its judgment as to credibility for that of the hearing examiner. *Lincoln Hockey, LLC v. D.C. Dep't of Empl. Servs.*, 831 A.2d 913, 2003 D.C. App. LEXIS 552 (2003).

Appellate court, on appeal from decision of administrative agency, cannot retry the facts or rehear the evidence. *Hahn v. Univ. of the Dist. of Columbia*, 789 A.2d 1252, 2002 D.C. App. LEXIS 7 (2002).

Where the precise question at issue in an appeal from an administrative decision is ultimately a matter of law on issues of statutory construction, the Court of Appeals remains the final authority. *Upchurch v. D.C. Dep't of Empl. Servs.*, 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

If an agency's decision is based upon a material misconception of the law, then a reviewing court will reject it. *Genstar Stone Prods. Co. v. Dep't of Empl. Servs.*, 777 A.2d 270, 2001 D.C. App. LEXIS 150 (2001).

"Substantial evidence" to support agency decision is more than a mere scintilla, and it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Clark v. District of Columbia Dep't of Empl. Servs.*, 772 A.2d 198, 2001 D.C. App. LEXIS 102 (2001).

Witness' demeanor is an appropriate consideration in assessing the credibility of a witness, and generally, credibility determinations based upon the demeanor of the witness are given special weight on judicial review. *Murray v. District of Columbia Dep't of Empl. Servs.*, 765 A.2d 980, 2001 D.C. App. LEXIS 13 (2001).

Except in unusual cases, Court of Appeals will not second-guess credibility determinations by agency; credibility is to be determined by finder of fact, who is not confined to cold paper record but has opportunity to observe the demeanor of witnesses. *Rafferty v. District of Columbia Zoning Comm'n*, 583 A.2d 169, 1990 D.C. App. LEXIS 287 (1990).

Department of Employment Services' regulation, which provides that the Director of the Department shall affirm workers' compensation order if it is supported by substantial evidence in the record, unequivocally binds the Director to substantial evidence review in all cases, with no exceptions, notwithstanding contention of the Director that regulation applied only to compensation orders issued without a hearing. D.C. Code 1981, § 1-1510(a)(3)(A). *Dell v. Department of Employment Services*, 499 A.2d 102, 1985 D.C. App. LEXIS 496 (1985).

Record.

If District of Columbia zoning commission in down-zoning downtown area acted for reasons not a matter of record, court would be required to find its actions arbitrary. D.C. Code § 1-1501 et seq.; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

An agency's findings will be left undisturbed if they are supported by substantial evidence in the record as a whole, even if contrary evidence also exists in the record. *Felicity'S, Inc. v. D.C. Bd. of Appeals & Review*, 851 A.2d 497, 2004 D.C. App. LEXIS 317 (2004).

Judicial review of an administrative agency decision is limited to the administrative record. *Murchison v. D.C. Dep't of Pub. Works*, 813 A.2d 203, 2002 D.C. App. LEXIS 736 (2002).

Although physician's reports about District of Columbia employee's sinusitis were insufficient to excuse employee's seven weeks of absence from work without leave, lack of transcript of proceeding before the Office of Employee Appeals (OEA) or comprehensive summary of employee's testimony precluded Court of Appeals from deciding whether the OEA determination, overturning employee's termination, was supported by substantial evidence or not. *Murchison v. D.C. Dep't of Pub. Works*, 813 A.2d 203, 2002 D.C. App. LEXIS 736 (2002).

Grounds upon which administrative order must be judged are those upon which record discloses that its action was based. *Atlantic Richfield Co. v. District of Columbia Com. on Human Rights*, 515 A.2d 1095, 1986 D.C. App. LEXIS 433 (1986).

On appeal, court does not review record of administrative proceeding de novo but, rather, examines record to determine whether agency could reasonably have found the facts as it did. *Pendleton v. District of Columbia Bd. of Elections & Ethics*, 449 A.2d 301, 1982 D.C. App. LEXIS 405 (1982).

Court's review of agency decision must be made upon the exclusive record for decision before the agency. D.C. Code 1978 Supp. § 1-1510(a). *Scott v. Police & Firemen's Retirement & Relief Bd.*, 447 A.2d 447, 1982 D.C. App. LEXIS 376 (1982).

In reviewing decisions of police trial board, superior court must review administrative record alone and not duplicate agency proceedings or hear additional evidence. D.C. Code 1981, §§ 1-1501 et seq., 1-1510. *Kegley v. District of Columbia*, 440 A.2d 1013, 1982 D.C. App. LEXIS 294 (1982).

Proponents of street closing are entitled to develop on record the identity and property interests of any groups or individuals opposing the proposed closing so as not only to enable Council to make fully informed judgment as to merits of a controversy but also to assist Court of Appeals in making future judgments as to whether a petitioner for review under statute is a person suffering a legal wrong or adversely affected or aggrieved by an order or decision of Commissioner or Council or agency in a contested case. D.C. Code §§ 1-1507, 1-1509(b, d), 1-1510, 7-404; D.C. Code Court of Appeals Rules, rule 15(b). *Chevy Chase Citizens Assn. v. District of Columbia Council*, 307 A.2d 740, 1973 D.C. App. LEXIS 413 (1973), vacated by 309 A.2d 97 (D.C. 1973).

Legislative history of Administrative Procedure Act providing, inter alia, that findings and conclusions of administrative agencies are to be set aside on judicial review if they are found to be unsupported by substantial evidence in record shows a clear congressional intent that District of Columbia Court of Appeals employ same standards for judicial review as other federal courts employ for Federal Administrative Procedure Act. D.C. Code §§ 1-1501 et seq., 1-1510(3)(E). *Wallace v. District Unemployment Compensation Board*, 294 A.2d 177, 1972 D.C. App. LEXIS 229 (1972).

Regulated industries generally.

In action challenging closing of public health clinic, evidence established that clinic had been major source of care, in sector of city, for medically indigent to whom availability of comprehensive medical services in geographically ac-

cessible locations was vital; that none of remaining public health clinics in sector offered necessary range of primary and secondary care; that clinic outside sector was geographically inaccessible to medically indigent who had used closed clinic, and that private medical facilities were not available to them. D.C. Code §§ 1-171i, 1-1501 to 1-1510, 1-1510(3), 32-322(a, b); § 32-101 et seq. (repealed). *Spivey v. Barry*, 501 F. Supp. 1093, 1980 U.S. Dist. LEXIS 16285 (1980), reversed by, remanded by 665 F.2d 1222, 214 U.S. App. D.C. 404, 1981 U.S. App. LEXIS 17915 (1981).

In action challenging closing of public health clinic, evidence established that decision to close clinic had been premised upon dearth of information regarding effects of closing on medically indigent and on misinformation about costs and benefits of closing, that comments of District of Columbia citizens concerning the closing had not been given consideration required by the District of Columbia Administrative Procedure Act and that comments of advisory neighborhood commission had not been given consideration required by the District of Columbia Advisory Neighborhood Commissions Act. D.C. Code §§ 1-171i, 1-1501 to 1-1510, 1-1510(3), 32-322(a, b); § 32-101 et seq. (repealed). *Spivey v. Barry*, 501 F. Supp. 1093, 1980 U.S. Dist. LEXIS 16285 (1980), reversed by, remanded by 665 F.2d 1222, 214 U.S. App. D.C. 404, 1981 U.S. App. LEXIS 17915 (1981).

Where closing of medical clinic in District of Columbia was an implementation of policy, it constituted a "rule" within the District of Columbia Administrative Procedure Act; thus, since the finalized decision to close clinic was made no later than four days after publication of proposed closing of clinic, instead of waiting 30 days from publication of notice before taking final action and there was no indication in the notice of intention to take action in less than 30 days, the closure violated the District of Columbia Code. D.C. Code §§ 1-1502(6), 1-1505(a), 1-1510. *Spivey v. Barry*, 501 F. Supp. 1093, 1980 U.S. Dist. LEXIS 16285 (1980), reversed by, remanded by 665 F.2d 1222, 214 U.S. App. D.C. 404, 1981 U.S. App. LEXIS 17915 (1981).

In light of requirements of Clinical Health Services Act, closing of medical clinic in District of Columbia without evaluating effect on medically indigent was arbitrary and capricious. D.C. Code §§ 1-1510(3), 32-322(a, b); § 32-101 et seq. (repealed); 5 U.S.C. § 702. *Spivey v. Barry*, 501 F. Supp. 1093, 1980 U.S. Dist. LEXIS 16285 (1980), reversed by, remanded by 665 F.2d 1222, 214 U.S. App. D.C. 404, 1981 U.S. App. LEXIS 17915 (1981).

Board of Appeals and Review did not abuse its discretion by exercising its authority to dismiss public hall operator's administrative appeal of decision of Department of Consumer and Regulatory Affairs (DCRA) Office of Adju-

dication (OAD) denying renewal of public hall license, where Board had asked operator to file a brief, but operator did not do so; assuming Board had duty to provide guidance to operator regarding how to prepare a transcript of OAD proceedings and make it part of the record, and assuming Board provided inadequate guidance, Board was clear in ordering operator to submit a brief, and operator could have sought extension of time to submit a brief. *Felicity'S, Inc. v. D.C. Bd. of Appeals & Review*, 851 A.2d 497, 2004 D.C. App. LEXIS 317 (2004).

Court of Appeals had exclusive jurisdiction to review approval by Department of Insurance and Securities Regulation (DISR) of business combination of health insurance carriers, and therefore, Superior Court lacked jurisdiction of action seeking to enjoin the consummation of the approved business combination. D.C. Code 1981, § 1-1510. *Fair Care Found. v. District of Columbia Dep't of Ins. & Sec. Regulation*, 716 A.2d 987, 1998 D.C. App. LEXIS 157 (1998).

Evidence was insufficient to support finding of Superintendent of Department of Insurance, in revoking insurer's certificate of authority to transact business, that the insurer through its principal officers caused issuance of printed material misrepresenting status of corporation which they had organized for declared purpose of assisting senior citizens in acquiring low cost hospital insurance. D.C. Code §§ 1-1510(3)(E), 35-405. *Union Fidelity Life Ins. Co. v. District of Columbia Dep't of Ins.*, 295 A.2d 62, 1972 D.C. App. LEXIS 261 (1972).

Res judicata and collateral estoppel.

Collateral estoppel applies not only to judicial adjudications, but also to determinations made by agencies other than courts, when such agencies are acting in a judicial capacity. *Wilson v. Hart*, 829 A.2d 511, 2003 D.C. App. LEXIS 485 (2003).

Rules governing merger of finally adjudicated claims into judgment and use of res judicata to bar collateral attack on underlying merits of final judgment are applicable to court action to enforce agency decision awarding money damages. *Strand v. Frenkel*, 500 A.2d 1368, 1985 D.C. App. LEXIS 585 (1985).

Review of decisions.

— Appellate review, review of decisions.

Court of Appeals affirms an administrative agency decision when (1) the agency made findings of fact on each materially contested issue of fact, (2) substantial evidence supports each finding, and, (3) the agency's conclusions flow rationally from its findings of fact. *Grand Hyatt Wash. v. D.C. Dep't of Empl. Servs.*, 963 A.2d 142, 2008 D.C. App. LEXIS 489 (2008).

Court of Appeals must affirm a decision of the Office of Administrative Hearings (OAH) when (1) OAH made findings of fact on each materi-

ally contested issue of fact, (2) substantial evidence supports each finding, (3) OAH's conclusions of law flow rationally from its findings of fact, and (4) OAH's legal conclusions are not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *Berkley v. D.C. Transit, Inc.*, 950 A.2d 749, 2008 D.C. App. LEXIS 267 (2008).

The Court of Appeals review of administrative agency decisions is limited. *Providence Hosp. v. D.C. Dep't of Empl. Servs.*, 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

If the findings of the Director of the Department of Employment Services are not supported by substantial evidence, they cannot be sustained, and the Court of Appeals is required to set them aside. *Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs.*, 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

The Court of Appeals must uphold the workers' compensation decision of the Director of the Department of Employment Services if it is in accordance with the law and supported by substantial evidence; evidence is substantial when a reasonable mind might accept it as adequate to support a conclusion. *Potomac Elec. Power Co. v. D.C. Dep't of Empl. Servs.*, 835 A.2d 527, 2003 D.C. App. LEXIS 681 (2003).

Unemployment compensation claimant raised issue of an unsafe working environment in initial claim, and in all subsequent stages of administrative process, and thus, issue was subject to appellate review. *Branson v. D.C. Dep't of Empl. Servs.*, 801 A.2d 975, 2002 D.C. App. LEXIS 360 (2002).

Court of Appeals must affirm an agency decision unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Clark v. District of Columbia Dep't of Empl. Servs.*, 772 A.2d 198, 2001 D.C. App. LEXIS 102 (2001).

In reviewing a trial court's exercise of discretion, appellate court should take cognizance of the nature of the determination being made and the context within which it was rendered, and if needs be, it may examine the record and infer the reasoning upon which trial court made its determination, even though to do so in review of agency's determination would constitute unwarranted judicial usurpation of the administrative role. D.C. Code § 1-1510(3)(E). *Johnson v. United States*, 398 A.2d 354, 1979 D.C. App. LEXIS 329 (1979).

— Deference to agency, review of decisions.

Court of Appeals defers to Office of Administrative Hearings (OAH) findings if they are supported by substantial evidence in the record considered as a whole; "substantial evidence" means such relevant evidence as a reasonable mind might accept as adequate to support a

conclusion. *Douglas-Slade v. United States DOT*, 959 A.2d 698, 2008 D.C. App. LEXIS 426 (2008).

— In general.

Office of Administrative Hearings (OAH) reviewing public employee's claim for unemployment benefits failed to make the necessary finding of fact on each materially contested issue of fact, as OAH was required to consider all bases on which employee alleged "good cause" supporting her decision to resign, including employee's claim of employer retaliation, but the final order made no mention of her supervisor's retaliatory statement in the Opportunity to Demonstrate Performance (ODP) that one of employee's "problems" stemmed from her unsubstantiated claims of a hostile environment based on a potential decision to deny leave. *Douglas-Slade v. United States DOT*, 959 A.2d 698, 2008 D.C. App. LEXIS 426 (2008).

When reviewing a decision of the board of zoning adjustment (BZA), the Court of Appeals must determine: (1) whether the BZA has made a finding of fact on each material factual issue, (2) whether substantial evidence of record supports each finding, and (3) whether conclusions legally sufficient to support the decision flow rationally from the fact-findings. *Chiapella v. D.C. Bd. of Zoning Adjustment*, 954 A.2d 996, 2008 D.C. App. LEXIS 374 (2008).

The Court of Appeals will affirm an agency's decision if it is satisfied that the agency engaged in reasonable analysis in coming to its decision. *Office of the People's Counsel v. PSC of D.C.*, 889 A.2d 1003, 2006 D.C. App. LEXIS 1 (2006).

Simple fairness to those who are engaged in the tasks of administration, and to litigants, requires as a general rule that courts should not topple over administrative decisions unless the administrative body not only has erred but has erred against objection made at the time appropriate under its practice. *D.C. Hous. Auth. v. D.C. Office of Human Rights*, 881 A.2d 600, 2005 D.C. App. LEXIS 459 (2005).

Simple fairness to those who are engaged in the tasks of administration, and to litigants, requires as a general rule that courts should not topple over administrative decisions unless the administrative body not only has erred but has erred against objection made at the time appropriate under its practice. *District of Columbia v. Freneau*, 869 A.2d 711, 2005 D.C. App. LEXIS 45 (2005).

In reviewing an agency decision, appellate court must consider: (1) whether the agency made a finding of fact on each material contested issue of fact; (2) whether substantial evidence in the record supports each finding; and (3) whether the conclusions of law follow rationally from the findings. *Georgetown Univ.*

v. D.C. Dep't of Empl. Servs., 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

In reviewing an agency decision, the Court of Appeals inquires: (1) whether the agency has made a finding of fact on each material contested issue of fact, (2) whether substantial evidence of record supports each finding, and (3) whether conclusions legally sufficient to support the decision flow rationally from the findings. *Wooten v. D.C. Dep't of Empl. Servs.*, 785 A.2d 657, 2001 D.C. App. LEXIS 235 (2001).

In reviewing merits of agency decision, Court of Appeals examines: (1) whether the agency made a finding of fact on each material contested issue of fact; (2) whether substantial evidence in the record supports each finding; and (3) whether conclusions of law follow rationally from the findings. *D.C. Code 1981, § 1-1510(a)(3). Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n*, 743 A.2d 1231, 2000 D.C. App. LEXIS 9 (2000).

— Preservation of issues, review of decisions.

Low-income housing provider waived for appellate review challenge against rent control regulation's 30-day deadline for perfecting rent ceiling adjustment by timely filing certificate of vacancy, lest forfeit right of adjustment, where provider failed to raise argument at hearing before Rental Housing Commission (RHC), on bases raised on appeal, that regulation was superseded by other conflicting laws. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Court of Appeals has discretion to deviate from its policy of refusing to consider contentions not presented before administrative agency at appropriate time, only in exceptional circumstances to avoid manifest injustice. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Contentions not urged at the administrative level may not form the basis for overturning the decision on review. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Low-income housing provider waived for appellate review any challenge against rent control regulation's 30-day deadline for perfecting rent ceiling adjustments of vacancy, on basis of alleged typographical error in statute, where provider failed to raise issue at hearing before Rental Housing Commission (RHC), the administrative agency which promulgated the challenged rules. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Court of Appeals would not address employer's argument on appeal for application of

"mailbox rule," under which relevant date was date on which check was mailed, to provision of Workers' Compensation Act imposing late payment penalty, where employer and its insurance carrier did not raise argument before Department of Employment Services, and record did not contain competent evidence documenting date on which carrier in fact mailed check to claimant. *Orius Telcoms., Inc. v. D.C. Dep't of Empl. Servs.*, 857 A.2d 1061, 2004 D.C. App. LEXIS 417 (2004).

University failed to preserve its claim that the board of zoning adjustment (BZA) lacked authority to impose student enrollment cap as condition for special exception and university plan; the university had asked the BZA, presumably for tactical reasons, first to maintain the 1990 cap and then, upon completion of a residence hall, to impose a different cap, and even though it claimed that it submitted the proposed order with the cap to be accepted or rejected as a whole, it could have made that position clear and was obliged to say loudly and clearly if it believed that the BZA lacked authority to impose a cap. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Whether employer acted illegally by creating a new rule when it adopted the new policy of no increases after first-level taxpayer appeals and, thus, allegedly violated the Whistleblower Protection Act, would not be considered by the Court of Appeals on appeal, where employee did not make that argument below. *Zirkle v. District of Columbia*, 830 A.2d 1250, 2003 D.C. App. LEXIS 540 (2003).

Normally, contentions not urged at the administrative level may not form the basis for overturning the decision on review, but courts may show a measure of flexibility in this regard when the interests of justice so require. *Moore v. D.C. Dep't of Empl. Servs.*, 813 A.2d 227, 2002 D.C. App. LEXIS 734 (2002).

Contentions not urged at the administrative level may not form the basis for overturning the decision on review, except under narrow exception on a showing of exceptional circumstances when the interests of justice so require. *Hahn v. Univ. of the Dist. of Columbia*, 789 A.2d 1252, 2002 D.C. App. LEXIS 7 (2002).

In the absence of exceptional circumstances, the reviewing court will not entertain a claim not raised before the agency. *Waugh v. D.C. Dep't of Empl. Servs.*, 786 A.2d 595, 2001 D.C. App. LEXIS 252 (2001).

Corporation was not precluded from raising on review contention that decision of Public Service Commission to approve plan to divest electric utility of its electrical generation assets was not in the interest of District residents due to specific provisions of plan; though another

party and not corporation specifically identified those provisions as contrary to resident's interests during Commission proceedings, corporation was not asserting a new grounds for reversal as it did argue to Commission that plan was not in residents' interests. *Moore Energy Res. v. PSC of the Dist. of Columbia*, 785 A.2d 300, 2001 D.C. App. LEXIS 237 (2001).

Absent exceptional circumstances, Court of Appeals will not consider claims which were not presented to the agency. *Jewell v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, 738 A.2d 1228, 1999 D.C. App. LEXIS 250 (1999).

Issues not urged at administrative level could not form basis for overturning on review decision denying license to operate multiple dwelling structure as apartment house. D.C. Code §§ 1-1510, 47-2302, 47-2328. *John D. Neumann Properties, Inc. v. District of Columbia, Board of Appeals & Review*, 268 A.2d 605, 1970 D.C. App. LEXIS 327 (App. 1970).

— Scope of review, review of decisions.

The Court of Appeals will affirm an administrative agency decision when (1) the agency made findings of fact on each contested material factual issue, (2) substantial evidence supports each finding, and (3) the agency's conclusions of law flow rationally from its findings of fact. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

Appellate court's review of an administrative agency's decision is limited to the record on appeal and the court cannot consider issues or evidence not presented to the agency. *Grand Hyatt Wash. v. D.C. Dep't of Empl. Servs.*, 963 A.2d 142, 2008 D.C. App. LEXIS 489 (2008).

The scope of appellate review in administrative cases prohibits the substitution of appellate court's judgment in areas of expertise reserved for the administrative agency, including an agency's reasonable interpretation of the statute it is charged with implementing. *Bernstein Mgmt. Corp. v. D.C. Rental Hous. Comm'n*, 952 A.2d 190, 2008 D.C. App. LEXIS 298 (2008).

Argument by workers' compensation claimant diagnosed with chronic fatigue syndrome that Department of Employment Services (DOES) failed to accommodate her disability during administrative hearings as required by the Americans with Disabilities Act (ADA), could not be raised by claimant in her appeal of decisions by Director of DOES in workers' compensation proceeding, as the scope of review in workers' compensation proceedings was limited to the decision of the Director of DOES under the Workers' Compensation Act, which did not include claims under the ADA. *Hisler v. D.C. Dep't of Empl. Servs.*, 950 A.2d 738, 2008 D.C. App. LEXIS 272 (2008).

In reviewing an action decision, the Court of Appeals is not permitted to re-weigh evidence or substitute its own judgment for that of the agency. *Wash. Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

Even though the case was on appeal from the Superior Court's ruling setting aside order of the Board of the Office of Employee Appeals, affirming employer's decision to discharge department of public works employee, Court of Appeals would review the decision of the Board as if the appeal had been taken directly to the Court of Appeals, and thus, Court of Appeals would examine the agency record to determine whether there was substantial evidence to support Board's findings of fact and whether Board's action was arbitrary, capricious, or an abuse of discretion. *D.C. Dep't of Pub. Works v. Colbert*, 874 A.2d 353, 2005 D.C. App. LEXIS 211 (2005).

In general, the Court of Appeals reviews an agency decision only to determine whether it is arbitrary, capricious, an abuse of discretion, or otherwise contrary to law. *Felicity'S, Inc. v. D.C. Bd. of Appeals & Review*, 851 A.2d 497, 2004 D.C. App. LEXIS 317 (2004).

The scope of review of an administrative decision is limited, and the Court of Appeals will affirm where (1) the agency's decision states findings of fact on each material, contested issue; (2) those findings are based on substantial evidence; and (3) the conclusions of law flow rationally from the findings. *Majerle Mgmt. v. Dist. of Columbia Rental Hous. Comm'n*, 768 A.2d 1003, 2001 D.C. App. LEXIS 58 (2001), vacated in part by, remanded by 777 A.2d 785, 2001 D.C. App. LEXIS 134 (D.C. 2001).

— Standard of review, review of decisions.

The Court of Appeals cannot affirm an administrative agency decision if it cannot confidently ascertain either the precise legal principles on which the agency relied or its underlying factual determinations. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

The Court of Appeals will not affirm an administrative determination which reflects a misconception of the relevant law or a faulty application of the law. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 971 A.2d 909, 2009 D.C. App. LEXIS 175 (2009).

An agency's legal conclusions must be sustained unless they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Smallwood v. D.C. Metro. Police Dep't*, 956 A.2d 705, 2008 D.C. App. LEXIS 396 (2008).

Court of Appeals must sustain the action of the board of zoning adjustment (BZA) unless the action was arbitrary, capricious, an abuse of

discretion, or otherwise not in accordance with law. *Chiapella v. D.C. Bd. of Zoning Adjustment*, 954 A.2d 996, 2008 D.C. App. LEXIS 374 (2008).

Court of Appeals will uphold the board of zoning adjustment's factual findings if they are based on substantial evidence in the record as a whole. *Basken v. D.C. Bd. of Zoning Adjustment*, 946 A.2d 356, 2008 D.C. App. LEXIS 215 (2008).

If a decision of the Police and Firefighters' Retirement and Relief Board is not supported by substantial evidence in the record, the Court of Appeals must set it aside. *Shaw v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 936 A.2d 800, 2007 D.C. App. LEXIS 566 (2007).

The Court of Appeals will uphold findings of the Board of Zoning Adjustment (BZA) if they are based on substantial evidence in the record as a whole; substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Kalorama Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, 934 A.2d 393, 2007 D.C. App. LEXIS 644 (2007).

Appellate courts defer to the agency's findings so long as they are supported by substantial evidence in the record considered as a whole. *Kalorama Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, 934 A.2d 393, 2007 D.C. App. LEXIS 644 (2007).

On judicial review of decision of Commission on Human Rights regarding claim of employment discrimination in violation of District of Columbia Human Rights Act (DCHRA), deference must be accorded credibility determinations and factual findings of hearing examiner who heard and observed witnesses. *Ottenberg's Bakers, Inc. v. D.C. Comm'n on Human Rights*, 917 A.2d 1094, 2007 D.C. App. LEXIS 98 (2007).

If the decision of the Commission on Human Rights, regarding a claim of employment discrimination in violation of the District of Columbia Human Rights Act (DCHRA), is supported by substantial evidence and in accordance with applicable law, the decision must be affirmed, even if the reviewing court would have reached a different decision on the same record. *Ottenberg's Bakers, Inc. v. D.C. Comm'n on Human Rights*, 917 A.2d 1094, 2007 D.C. App. LEXIS 98 (2007).

The reviewing court will accept the factual findings of the Commission on Human Rights, regarding a claim of employment discrimination in violation of the District of Columbia Human Rights Act (DCHRA), if supported by substantial evidence. *Ottenberg's Bakers, Inc. v. D.C. Comm'n on Human Rights*, 917 A.2d 1094, 2007 D.C. App. LEXIS 98 (2007).

Legal conclusions of the Office of Administrative Hearings (OAH) in an unemployment compensation case must be sustained unless they

are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Rodriguez v. Filene's Basement, Inc.*, 905 A.2d 177, 2006 D.C. App. LEXIS 429 (2006).

When the initial examiner has become unavailable, courts have uniformly required a hearing de novo whenever the agency's decision depends to any extent on the credibility of witnesses. *District of Columbia v. Freneau*, 869 A.2d 711, 2005 D.C. App. LEXIS 45 (2005).

The Court of Appeals must affirm an agency decision unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Providence Hosp. v. D.C. Dep't of Empl. Servs.*, 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

Administrative order can only be sustained on grounds relied on by agency; Court of Appeals cannot substitute its judgment for that of agency. *Kralick v. D.C. Dep't of Empl. Servs.*, 842 A.2d 705, 2004 D.C. App. LEXIS 57 (2004).

Court of Appeal's review of administrative orders is two-fold: (1) it reviews the factual findings of the agency to determine if there is substantial evidence to support them, and (2) it conducts a de novo review of an agency's legal conclusions. *Zhang v. D.C. Dep't of Consumer & Regulatory Affairs*, 834 A.2d 97, 2003 D.C. App. LEXIS 625 (2003).

Appellate court must affirm an agency decision unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

Credibility determinations of a hearing examiner are accorded special deference by the appellate court. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

On review of agency decision, reviewing court must be mindful that it is the rationale of the agency that is reviewed, not the post hoc rationalizations of its counsel. *Walsh v. D.C. Bd. of Appeals & Review*, 826 A.2d 375, 2003 D.C. App. LEXIS 414 (2003).

Administrative order can only be sustained on appeal on the grounds relied on by the agency. *Walsh v. D.C. Bd. of Appeals & Review*, 826 A.2d 375, 2003 D.C. App. LEXIS 414 (2003).

To uphold the decision of an administrative agency in a contested case under the Administrative Procedure Act, (1) the decision must state findings of fact on each material, contested factual issue, (2) those findings must be based on substantial evidence, and (3) the conclusions of law must follow rationally from the

findings. *Powell v. D.C. Hous. Auth.*, 818 A.2d 188, 2003 D.C. App. LEXIS 132 (2003).

When an administrative agency decision is based upon a material misconception of the law, the Court of Appeals will reject it. *Moore v. D.C. Dep't of Empl. Servs.*, 813 A.2d 227, 2002 D.C. App. LEXIS 734 (2002).

Although the initial review of the decision of the District of Columbia Office of Employee Appeals (OEA) was in superior court, on appeal the Court of Appeals' scope of review was precisely the same as in administrative appeals coming to the Court directly. *Moore v. D.C. Dep't of Empl. Servs.*, 813 A.2d 227, 2002 D.C. App. LEXIS 734 (2002).

In general, the Court of Appeals reviews an agency decision only to determine whether it is arbitrary, capricious, an abuse of discretion, or otherwise contrary to law. *Stancil v. D.C. Rental Hous. Comm'n*, 806 A.2d 622, 2002 D.C. App. LEXIS 528 (2002).

In reviewing an agency interpretation of a statute, reviewing court follows the two-part test set out in *Chevron*: (1) reviewing court must determine whether the meaning of the statute is clear, and if it is, that is the end of the matter; but (2) if the statute is ambiguous, reviewing court must defer to the agency's interpretation of the statutory language so long as it is reasonable. *Stancil v. D.C. Rental Hous. Comm'n*, 806 A.2d 622, 2002 D.C. App. LEXIS 528 (2002).

Reviewing court affirms an agency decision unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *Stancil v. D.C. Rental Hous. Comm'n*, 806 A.2d 622, 2002 D.C. App. LEXIS 528 (2002).

The Court of Appeals must affirm an agency decision unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *White v. D.C. Dep't of Empl. Servs.*, 793 A.2d 1255, 2002 D.C. App. LEXIS 63 (2002).

Appellate court will review the affirmation of an administrative action by the trial court in the same way that it would examine the agency's ruling if it came before it on direct review from the agency. *Hahn v. Univ. of the Dist. of Columbia*, 789 A.2d 1252, 2002 D.C. App. LEXIS 7 (2002).

The Court of Appeals, in reviewing an agency order, applies the "substantial evidence" standard. *Wooten v. D.C. Dep't of Empl. Servs.*, 785 A.2d 657, 2001 D.C. App. LEXIS 235 (2001).

The Court of Appeals must affirm an agency decision unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Upchurch v. D.C. Dep't of Empl. Servs.*, 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

Reviewing court cannot substitute its judgment for that of the agency. *Giles v. District of*

Columbia Dep't of Empl. Servs., 758 A.2d 522, 2000 D.C. App. LEXIS 203 (2000).

It is not function of reviewing court under Administrative Procedure Act to superimpose its own opinion over the findings of the agency; obligation of court is to determine whether agency's decision is supported by and in accordance with reliable, probative and substantial evidence. D.C. Code 1981, §§ 1-1501 et seq., 1-1509(e). *DiVincenzo v. District of Columbia Police & Firefighters Retirement & Relief Bd.*, 620 A.2d 868, 1993 D.C. App. LEXIS 41 (1993).

The appellate standard of review for agency decisions requires that the agency make findings on each material issue of fact, that its findings be supported by substantial evidence, and that its conclusions flow rationally from those findings and comport with applicable law. D.C. Code 1981, § 1-1510. *Red Star Express v. District of Columbia Dep't of Employment Services*, 606 A.2d 161, 1992 D.C. App. LEXIS 88 (1992).

Under two-part test for judicial review of agency decisions which interpret or apply statutory provisions, reviewing court must first determine whether meaning of statute is clear; only when statute is ambiguous does court turn to second part of inquiry, which is to determine whether agency's decision is based on permissible construction of the statute. *Columbia Realty Venture v. District of Columbia Rental Housing Com.*, 590 A.2d 1043, 1991 D.C. App. LEXIS 106 (1991).

Court of Appeals' standard of review with respect to Rental Housing Commission's allowance or nonallowance of landlord's various proposed renovations pursuant to substantial rehabilitation petition is governed by applicable provisions of Administrative Procedure Act which provides that Court of Appeals may set aside agency decision which is found to be arbitrary, capricious, abuse of discretion, or otherwise not in accordance with law or unsupported by substantial evidence in record. D.C. Code 1981, §§ 1-1510, 1-1510(a)(3)(A, E). *Tenants of 738 Longfellow Street, N.W. v. District of Columbia Rental Housing Com.*, 575 A.2d 1205, 1990 D.C. App. LEXIS 131 (1990).

In reviewing decision of administrative agency, Court of Appeals must determine whether there is substantial evidence in record to support decision, or whether it is in any way arbitrary, capricious, or abuse of discretion; in making that determination, Court of Appeals starts from premise that agency's decision, like decision of trial court, is presumed to be correct, so that burden of demonstrating error is on appellant or petitioner who challenges decision; part of that burden includes duty to present Court of Appeals with record sufficient to show affirmatively that error occurred. D.C. Code 1981, § 1-1510(a). *Cohen v. Rental Housing*

Com., 496 A.2d 603, 1985 D.C. App. LEXIS 451 (1985).

An administrative order cannot be upheld unless grounds upon which agency acted in exercising its powers were those upon which its action can be sustained. *National Broadcasting Co. v. District of Columbia Com. on Human Rights*, 463 A.2d 657, 1983 D.C. App. LEXIS 410 (1983).

— Substantial evidence for findings, review of decisions.

The Court of Appeals upholds the Board of Zoning Adjustment's (BZA's) factual findings when they are based on substantial evidence in the record as a whole. *N. St. Folliess, Ltd. P'shp v. D.C. Bd. of Zoning Adjustment*, 949 A.2d 584, 2008 D.C. App. LEXIS 260 (2008).

Court of Appeals will uphold an agency's decision if it is based upon "substantial evidence," which means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

Appellate court will affirm the agency's findings of fact as long as they are supported by substantial evidence, notwithstanding that there may be contrary evidence in the record. *Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs.*, 859 A.2d 1058, 2004 D.C. App. LEXIS 514 (2004).

In reviewing an administrative decision, appellate court defers to factual findings of the agency as long as there is substantial evidence to support them. *Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs.*, 859 A.2d 1058, 2004 D.C. App. LEXIS 514 (2004).

The Court of Appeals will not disturb an agency ruling as long as the decision flows rationally from the facts, and the facts are supported by substantial evidence in the record. *Providence Hosp. v. D.C. Dep't of Empl. Servs.*, 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

Court of Appeals applies three-part test when reviewing administrative decision under substantial evidence standard: (1) decision must state findings of fact on each material, contested factual issue; (2) those findings must be based on substantial evidence; and (3) conclusions of law must follow rationally from findings. *Kralick v. D.C. Dep't of Empl. Servs.*, 842 A.2d 705, 2004 D.C. App. LEXIS 57 (2004).

On appeal of an agency decision, the Court of Appeals must determine whether (1) the agency made a finding of fact on each material contested issue of fact; (2) substantial evidence in the record supports each finding; and (3) the conclusions of law follow rationally from the findings. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

When reviewing an agency decision on appeal, appellate court inquires: (1) whether the agency has made a finding of fact on each material contested issue of fact; (2) whether substantial evidence of record supports each finding; and (3) whether conclusions legally sufficient to support the decision flow rationally from the findings. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

Appellate court's review of decisions of administrative agencies is limited to determining whether the order is in accordance with law and supported by substantial evidence in the record. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

Appellate court defers to the determination of the Director of Department of Employment Services (DOES) as long as the Director's decision flows rationally from the facts, and those facts are supported by substantial evidence in the record. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

The Court of Appeals' review of the decision of the Board of Appeals and Review (BAR) is limited; as with other administrative agencies, the Court will inquire whether the BAR (1) made findings of fact on each material, contested factual issue, (2) based those findings on substantial evidence, and (3) drew conclusions of law which followed rationally from the findings. *Bio-Medical Applications of the Dist. of Columbia v. D.C. Bd. of Appeals & Review*, 829 A.2d 208, 2003 D.C. App. LEXIS 479 (2003).

Court's review generally is limited to ensuring that an agency (1) made findings of fact on each material, contested factual issue, (2) based those findings on substantial evidence, and (3) drew conclusions of law which followed rationally from the findings. *Walsh v. D.C. Bd. of Appeals & Review*, 826 A.2d 375, 2003 D.C. App. LEXIS 414 (2003).

Unless the Alcoholic Beverage Control Board has committed an error of law, the Court of Appeals will overturn its decision only if it is unsupported by substantial evidence. *Tiger Wyk Ltd. v. D.C. Alcoholic Bev. Control Bd.*, 825 A.2d 303, 2003 D.C. App. LEXIS 292 (2003).

In reviewing an agency's decision, the Court of Appeals must sustain its findings unless they are unsupported by substantial evidence in the record of the proceedings; however, the Court will not disturb the agency's decision if it flows rationally from the facts which are supported by substantial evidence in the record. *Union Light & Power Co. v. D.C. Dep't of Empl. Servs.*, 796 A.2d 665, 2002 D.C. App. LEXIS 85 (2002).

Appellate court will examine an administrative record to determine if there has been procedural error, if there is substantial evidence in the record to support the action of the agency, or if the action is in some manner otherwise arbitrary, capricious, or an abuse of discretion. *Hahn v. Univ. of the Dist. of Columbia*, 789 A.2d 1252, 2002 D.C. App. LEXIS 7 (2002).

Reviewing court defers to agency findings of fact so long as they are supported by substantial evidence, and "substantial evidence" is more than a mere scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Giles v. District of Columbia Dep't of Empl. Servs.*, 758 A.2d 522, 2000 D.C. App. LEXIS 203 (2000).

Appellate court's review of agency action differs from its review of a trial court's discretionary determination in the manner in which it probes decision maker's record; in reviewing an administrative action, substantial evidence test requires that a quantum of fact supports the determination and that conclusions relate rationally to that quantum. D.C. Code § 1-1510(3)(E). *Johnson v. United States*, 398 A.2d 354, 1979 D.C. App. LEXIS 329 (1979).

Right of review.

Superior Court is not an alternative forum, but rather serves as a last resort for reviewing decisions generated by Comprehensive Merit Personnel Act (CMPA) procedures. *Baker v. District of Columbia*, 785 A.2d 696, 2001 D.C. App. LEXIS 247 (2001).

To obtain judicial review of administrative action, party must allege that it has been adversely affected or aggrieved by findings and conclusions of which it complains, or that it has suffered a legal wrong. *District Intown Props. v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 680 A.2d 1373, 1996 D.C. App. LEXIS 139 (1996).

Party has not been adversely affected or aggrieved by agency action such that judicial review is warranted unless it has suffered or will sustain some actual or threatened injury in fact from challenged agency action. *District Intown Props. v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 680 A.2d 1373, 1996 D.C. App. LEXIS 139 (1996).

Actual or threatened legal wrong or injury must be certain, rather than conjectural or speculative, to warrant judicial review of agency action. *District Intown Props. v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 680 A.2d 1373, 1996 D.C. App. LEXIS 139 (1996).

Generally, administrative orders are not judicially reviewable unless and until they impose an obligation, deny a right, or fix some legal relationship as consummation of admin-

istrative process. *District Intown Props. v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 680 A.2d 1373, 1996 D.C. App. LEXIS 139 (1996).

Although there are slight differences in language between federal Administrative Procedure Act's standing provision and its District of Columbia counterpart, two provisions were intended to be interpreted virtually alike. D.C. Code § 1-1510; 5 U.S.C. § 702. *Lee v. District of Columbia Board of Appeals & Review*, 423 A.2d 210, 1980 D.C. App. LEXIS 405 (1980).

Since Congress has limited authority of District of Columbia Court of Appeals to review local administrative actions, under Administrative Procedure Act, Court of Appeals may entertain only petitions brought by any person suffering legal wrong, or adversely affected or aggrieved, by order or decision of mayor or agency in contested case, Court of Appeals' jurisdiction over subject matter of review is contingent upon petitioner's right to prosecute appeal, and, therefore, issue of standing can be raised *sua sponte*. D.C. Code § 1-1510. *Lee v. District of Columbia Board of Appeals & Review*, 423 A.2d 210, 1980 D.C. App. LEXIS 405 (1980).

Although injury in fact need not be particularly substantial one to support District of Columbia Court of Appeals' jurisdiction over petition for review of administrative action, injury must be one which petitioners have suffered or are in immediate danger of sustaining; petitioners must allege injury or aggrievement which is real, perceptible, concrete, specific and immediate, rather than one that is conjectural, hypothetical or speculative. D.C. Code § 1-1510. *Lee v. District of Columbia Board of Appeals & Review*, 423 A.2d 210, 1980 D.C. App. LEXIS 405 (1980).

Under the District of Columbia Administrative Procedure Act providing that any person suffering a legal wrong, or adversely affected or aggrieved, by order or decision of an agency in a contested case is entitled to a judicial review thereof, in order for party to have standing to challenge action of an agency, he must allege that the challenged action has caused him injury in fact, he must allege that the agency has acted arbitrarily, capriciously or in excess of its statutory authority, so as to injure an interest that is arguably within zone of interests to be protected or regulated by statute or constitutional guarantee in question and there must be no clear and convincing indication of a legislative intent to withhold judicial review. D.C. Code § 1-1510. *Basiliko v. Government of Dist. of Columbia*, 283 A.2d 816, 1971 D.C. App. LEXIS 237 (1971).

Time of application for review.

Residents were not entitled to extension of 60 day period in which they had to appeal decision

of the department of consumer and regulatory affairs approving expansion of apartment complex, which began to run after they saw copy of director's letter giving final approval for expansion, in the absence of any exceptional circumstances beyond their control. *Basken v. D.C. Bd. of Zoning Adjustment*, 946 A.2d 356, 2008 D.C. App. LEXIS 215 (2008).

Department of consumer and regulatory affairs director's letter to advisory neighborhood commission, which residents saw, stated clearly that the zoning decision allowing for expansion of apartment complex had been made and referenced commission's right to appeal the decision, and thus, letter initiated the 60 day period in which residents had to appeal department's decision. *Basken v. D.C. Bd. of Zoning Adjustment*, 946 A.2d 356, 2008 D.C. App. LEXIS 215 (2008).

Residents failed to timely appeal department of consumer and regulatory affairs' decision alleging lot occupancy and side-yard setback zoning violations regarding enlargement of apartment complex, where they failed to file appeal within 60 days after building permit was issued or within ten days of the time the new construction was under roof. *Basken v. D.C. Bd. of Zoning Adjustment*, 946 A.2d 356, 2008 D.C. App. LEXIS 215 (2008).

Laid-off public school attendance officer could not appeal to the Superior Court the denial of his request for severance pay, under the Comprehensive Merit Personnel Act, where he did not bring his appeal within 30 days. *Fisher v. District of Columbia*, 803 A.2d 962, 2002 D.C. App. LEXIS 385 (2002).

Thirty-day limitation on appeal of agency action under Comprehensive Merit Personnel Act (CMPA) is mandatory and jurisdictional. *Fisher v. District of Columbia*, 803 A.2d 962, 2002 D.C. App. LEXIS 385 (2002).

Corporation's failure to cure irregularity in petition for review within mandatory and jurisdictional time requirement was irrelevant, where petition was filed well with such time requirement. *Moore Energy Res. v. PSC of the Dist. of Columbia*, 785 A.2d 300, 2001 D.C. App. LEXIS 237 (2001).

Time limits for filing appeals with administrative adjudicative agency, as with courts, are mandatory and jurisdictional matters, and issue of prejudice is irrelevant. *District of Columbia Public Employee Relations Bd. v. District of Columbia Metro. Police Dep't*, 593 A.2d 641, 1991 D.C. App. LEXIS 185 (1991).

Date on arbitrators' cover letter, mailing to Metropolitan Police Department award of ordering reinstatement of police officer, did not constitute reliable, probative and substantial evidence of date of mailing, for purposes of determining whether the Department's appeal of the award was timely. *District of Columbia Public Employee Relations Bd. v. District of*

Columbia Metro. Police Dep't, 593 A.2d 641, 1991 D.C. App. LEXIS 185 (1991).

Unemployment compensation.

— Administrative review, unemployment compensation.

Superior Court was required to review administrative record alone for procedural error, for substantial evidence to support action and to determine whether the decision was in some manner arbitrary, capricious or contrary to law, rather than conduct a de novo hearing, when guardian ad litem filed petition seeking admission of ward into a residential habilitation facility as a mentally retarded person under the Mentally Retarded Citizens Constitutional Rights and Dignity Act, after Department on Disability Services (DDS) denied application for voluntary admission. In re A.T., 10 A.3d 127, 2010 D.C. App. LEXIS 728 (2010).

Office of Appeals and Review (OAR) of Department of Employment Services (DOES) substituted its own view of the evidence, as to whether claimant missed medical appointments without adequate excuse so as to constitute misconduct disqualifying him from receipt of unemployment benefits, for the appeals examiner's view of the evidence, contrary to limitations on OAR's review authority, and thus, OAR's decision reversing appeals examiner's denial of unemployment benefits to claimant would be vacated; however, remand was necessary in light of OAR's alternate determination that appeals examiner had conducted hearing in unfair manner. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 806 A.2d 224, 2002 D.C. App. LEXIS 511 (2002).

Dismissal of timely appeal from denial of unemployment compensation benefits for claimant's failure to appear at hearing was arbitrary and capricious where employer had burden of proving claimant was discharged for misconduct and failed to meet that burden. D.C. Code 1981, § 1-1510(a)(3)(A). McCaskill v. District of Columbia Dep't of Employment Services, 572 A.2d 443, 1990 D.C. App. LEXIS 66 (1990), amended by 1990 D.C. App. LEXIS 128 (D.C. June 6, 1990).

Notice which the Department of Employment Services sent to the petitioner with respect to her eligibility for unemployment compensation was defective and, hence, was not a basis for determining that petitioner was ineligible because she failed to perfect a timely intraagency appeal where it failed to indicate whether ten days for filing an appeal from date of claims examiner's decision were calendar or working days. D.C. Code 1981, §§ 1-1510(a)(3)(D), 46-112(b). Cobo v. District of Columbia Dep't of Employment Services, 501 A.2d 1278, 1985 D.C. App. LEXIS 539 (1985).

— Determination on review, unemployment compensation.

When substantial evidence in the record as a

whole supports a finding of fact by the appeals examiner in unemployment compensation case, the Office of Appeals and Review (OAR) of the Department of Employment Services (DOES) is bound by that determination. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 806 A.2d 224, 2002 D.C. App. LEXIS 511 (2002).

In unemployment compensation case in which employer stated multiple reasons for firing employee, remand was required to determine whether reasons given for employee's discharge were independent of one another and whether evidence supported one ground given for dismissal. D.C. Code 1981, § 1-1510(a)(3)(E). Smithsonian Institution v. District of Columbia Dep't of Employment Services, 514 A.2d 1191, 1986 D.C. App. LEXIS 426 (1986).

The Court of Appeals cannot uphold a Department of Employment Services' decision on grounds other than those actually relied on by the agency. Jadallah v. District of Columbia Dep't of Employment Services, 476 A.2d 671, 1984 D.C. App. LEXIS 395 (1984).

Court of Appeals must overturn a denial of unemployment compensation benefits erroneously based on conduct substantially different from that which was specified as a reason for the initial discharge; in addition, the court must not permit the director of the Department of Labor to grant benefits based on his finding that the grounds for discharge are other than originally alleged by the employer and, thus, necessarily unsupported by the employer's evidence. D.C. Code §§ 1-1510, 1-1510(3)(E), 46-303(c)(10), 46-312. American University v. District of Columbia Dep't of Labor, 429 A.2d 1374, 1981 D.C. App. LEXIS 264 (1981).

— Evidence generally, unemployment compensation.

"Substantial evidence" is relevant evidence which a reasonable trier of fact would find adequate to support a conclusion. George Washington Univ. v. D.C. Bd. of Zoning Adjustment, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

"Substantial evidence" is more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Muhammad v. District of Columbia Dep't of Empl. Servs., 774 A.2d 1107, 2001 D.C. App. LEXIS 171 (2001).

In case of voluntary separation from employment, unemployment compensation claimant has burden of establishing good cause. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(a). Lyons v. District of Columbia Dep't of Empl. Services, 551 A.2d 1345, 1988 D.C. App. LEXIS 230 (1988).

Employer's testimony that employee called office assistant and resigned position and letter

from employer to employee that stated employer had been informed by office assistant of employee's desire to discontinue work which Department of Employment Services relied on to conclude employee voluntarily left work without good cause was hearsay and therefore did not constitute substantial evidence sufficient to resolve conflicting testimony and contradict employee's declared interest in continuing part-time work as consultant on regular basis. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(a). *McLean v. District of Columbia Dep't of Employment Services*, 506 A.2d 1135, 1986 D.C. App. LEXIS 305 (1986).

Decision of Department of Employment Services was "not in accordance with law" where burden of proving involuntary separation from employment, so as to be entitled to unemployment compensation, was placed on employee. D.C. Code 1981, § 1-1510(a)(3)(A). *Green v. District of Columbia Dep't of Employment Services*, 499 A.2d 870, 1985 D.C. App. LEXIS 516 (1985).

Regulatory presumption that a leaving is involuntary on the part of the claimant for unemployment compensation unless the facts clearly indicate otherwise is rebuttable. D.C. Code 1981, § 1-1510(a)(3)(E). *Harris v. District of Columbia Dep't of Employment Services*, 476 A.2d 1111, 1984 D.C. App. LEXIS 421 (1984), writ of certiorari denied by 469 U.S. 863, 105 S. Ct. 200, 83 L. Ed. 2d 132, 1984 U.S. LEXIS 3687, 53 U.S.L.W. 3240 (1984).

Claimant for unemployment compensation was not denied procedural due process on theory that he was not instructed that burden of proof was on employer, which alleged misconduct of employee as ground for discharge, and that, in absence of affirmative proof of such misconduct, employee was not obliged to offer any testimony nor would any misconduct be presumed from his failure to testify, where claimant had been informed by appeals examiner prior to hearing that burden was on employer, he had been represented by counsel at both hearings and regulation respecting burden of proof was matter of public record. D.C. Code §§ 1-1510, 11-722, 46-310(b). *Colvin v. District Unemployment Compensation Board*, 306 A.2d 662, 1973 D.C. App. LEXIS 311 (1973).

— Funds, payments, amount and period, unemployment compensation.

Absent particularized findings of fraud with reference to the individual claimant, a denial of unemployment benefits under statutory provision pertaining to knowingly making a false statement for the purpose of obtaining benefits would be arbitrary, capricious and an abuse of discretion. D.C. Code §§ 1-1510, 46-319(e). *Jacobs v. District Unemployment Compensation Board*, 382 A.2d 282, 1978 D.C. App. LEXIS 412 (1978).

Where claimant, by combining his military service with his later private employment in Ohio, claimed to be qualified for increased benefits under the Interstate Arrangement for Combining Employment and Wages, his military service constituted "employment" under interstate arrangement entered into by District of Columbia, and since the District was the paying state and Ohio was the transferring state, Ohio law governed whether claimant's employment was subject to transfer to the District so as to qualify him for increased benefits. R.C. Ohio § 4141.29; D.C. Code §§ 1-1510, 46-301(b)(5)(D), (b)(7), 46-316(b, c); 5 U.S.C. §§ 8501 et seq., 8521 et seq., 8522; 26 U.S.C. (I.R.C.1954) §§ 3301, 3302(a)(1), 3304(a)(9)(B), 3306. *Benjamin Rose Institute v. District Unemployment Compensation Board*, 338 A.2d 104, 1975 D.C. App. LEXIS 380 (1975).

— Harmless or prejudicial error, unemployment compensation.

Appeal examiner's error in basing his conclusion that employee did not resign for good cause connected with the work on finding that it would have been "more prudent" for him to keep his job until he found a better one was harmless, since employee presented no evidence which would satisfy proper test of whether employee's actual course of conduct was reasonable and prudent. D.C. Code 1981, § 1-1510(b). *Bowen v. District of Columbia Dep't of Employment Services*, 486 A.2d 694, 1985 D.C. App. LEXIS 304 (1985).

— In general.

Notice to unemployment compensation claimant of opportunity to contest denial of claim was ambiguous as to whether the ten-day appeal period was "working days" or "calendar days" and inadequate as a matter of law since a person after termination of a working relationship would be accustomed to business practice of calculating time periods in terms of work days, and especially where claimant was incorrectly informed by an employee of Department of Employment Services that period was ten working days. D.C. Code 1981, §§ 1-1510(a)(3)(D), 46-112(b). *Plouffe v. District of Columbia Dep't of Employment Services*, 497 A.2d 464, 1985 D.C. App. LEXIS 471 (1985).

The agency's construction of a controlling statute or regulation in an unemployment case should be deferred to by the reviewing court. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(a). *Kramer v. D. C. Dep't of Employment Services*, 447 A.2d 28, 1982 D.C. App. LEXIS 369 (1982).

Even if District of Columbia Unemployment Compensation Board deemed it unnecessary to permit a reply to petition for appeal in unemployment compensation proceeding, the other party at least should have been given notice

that appeal had been filed. D.C. Code §§ 1-1501 et seq., 46-311(e). *Woodridge Nursery School v. Jessup*, 269 A.2d 199, 1970 D.C. App. LEXIS 340 (App. 1970).

— **Questions of law and fact, unemployment compensation.**

Legal rulings of the Director of the Department of Employment Services (DOES) are reviewed de novo in workers' compensation cases. *Clark v. District of Columbia Dep't of Empl. Servs.*, 772 A.2d 198, 2001 D.C. App. LEXIS 102 (2001).

In evaluating the evidence of record in workers' compensation case, Department of Employment Services (DOES) must take into account the testimony of a treating physician, which is ordinarily preferred over that of a physician retained solely for litigation purposes. *Clark v. District of Columbia Dep't of Empl. Servs.*, 772 A.2d 198, 2001 D.C. App. LEXIS 102 (2001).

Review by the Court of Appeals of a final decision by the Department of Employment Services (DOES) regarding unemployment benefits is limited to determining whether there is substantial evidence in the record to support the agency's final decision. D.C. Code 1981, § 1-1510(a)(3)(E). *Couser v. District of Columbia Dep't of Empl. Servs.*, 744 A.2d 990, 1999 D.C. App. LEXIS 310 (1999).

On review of decision of Department of Employment Services denying unemployment benefits, question addressed is whether critical findings of the Department are supported by substantial evidence. *Gopstein v. District of Columbia Dep't of Employment Services*, 479 A.2d 1278, 1984 D.C. App. LEXIS 456 (1984).

The limited scope of review in an unemployment case requires the Court of Appeals to reverse the findings of the Office of Unemployment Compensation only if they are unsupported by substantial evidence in the record of the proceedings. D.C. Code 1981, § 1-1510(a)(3)(E). *Harris v. District of Columbia Dep't of Employment Services*, 476 A.2d 1111, 1984 D.C. App. LEXIS 421 (1984), writ of certiorari denied by 469 U.S. 863, 105 S. Ct. 200, 83 L. Ed. 2d 132, 1984 U.S. LEXIS 3687, 53 U.S.L.W. 3240 (1984).

Substantial evidence supporting a decision of the Office of Unemployment Compensation is more than a mere scintilla and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. D.C. Code 1981, § 1-1510(a)(3)(E). *Harris v. District of Columbia Dep't of Employment Services*, 476 A.2d 1111, 1984 D.C. App. LEXIS 421 (1984), writ of certiorari denied by 469 U.S. 863, 105 S. Ct. 200, 83 L. Ed. 2d 132, 1984 U.S. LEXIS 3687, 53 U.S.L.W. 3240 (1984).

Requirement that a decision of the Department of Employment Services must be supported by substantial evidence in the record in

order to escape being set aside on appeal means more than a mere scintilla but such evidence as a reasonable mind might accept as adequate to support a conclusion. D.C. Code 1981, § 1-1501(a)(3)(E). *Harris v. District of Columbia Dep't of Employment Services*, 476 A.2d 1111, 1984 D.C. App. LEXIS 421 (1984), writ of certiorari denied by 469 U.S. 863, 105 S. Ct. 200, 83 L. Ed. 2d 132, 1984 U.S. LEXIS 3687, 53 U.S.L.W. 3240 (1984).

A final decision of the Department of Employment Services should not be disturbed if it rationally flows from facts relied upon and those facts or findings are substantially supported by evidence of record. *Harris v. District of Columbia Dep't of Employment Services*, 476 A.2d 1111, 1984 D.C. App. LEXIS 421 (1984), writ of certiorari denied by 469 U.S. 863, 105 S. Ct. 200, 83 L. Ed. 2d 132, 1984 U.S. LEXIS 3687, 53 U.S.L.W. 3240 (1984).

Court of Appeals may not substitute its judgment for that of the Department of Employment Services, however, a decision of the Department must be set aside if not supported by substantial evidence in the record. *Harris v. District of Columbia Dep't of Employment Services*, 476 A.2d 1111, 1984 D.C. App. LEXIS 421 (1984), writ of certiorari denied by 469 U.S. 863, 105 S. Ct. 200, 83 L. Ed. 2d 132, 1984 U.S. LEXIS 3687, 53 U.S.L.W. 3240 (1984).

The Court of Appeals should not disturb an unemployment decision of the Director, District of Columbia Department of Employment Services, if it rationally flows from the facts relied upon and those facts or findings are substantially supported by the evidence of record. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(a). *Kramer v. D. C. Dep't of Employment Services*, 447 A.2d 28, 1982 D.C. App. LEXIS 369 (1982).

District of Columbia Court of Appeals must reverse final decision of Director of District of Columbia Department of Employment Services if his findings and conclusions are unsupported by substantial evidence in record or proceedings before Court, but Court may not substitute its judgment for Director's if his findings are supported by substantial evidence and his decision follows from such finding. D.C. Code 1981, § 1-1510(a)(3)(E). *Hockaday v. D. C. Dep't of Employment Services*, 443 A.2d 8, 1982 D.C. App. LEXIS 304 (1982).

In reviewing a decision of the district unemployment compensation board, the court may hold unlawful and set aside any action or findings and conclusions unsupported by reliable, probative and substantial evidence in the record. D.C. Code §§ 1-1509(e), 1-1510(3)(E). *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

If supported by substantial evidence in the record, findings of the Unemployment Compensation Board are binding on the District of

Columbia Court of Appeals. D.C. Code §§ 1-1510, 46-311(f). *Kober v. District Unemployment Compensation Board*, 384 A.2d 633, 1978 D.C. App. LEXIS 447 (1978).

Court is required to set aside the District Unemployment Compensation Board's holdings if they are not supported by substantial evidence in the record. D.C. Code § 1-1510(3)(E). *Hawkins v. District Unemployment Compensation Board*, 381 A.2d 619, 1977 D.C. App. LEXIS 307 (1977).

Scope of review of decision of Unemployment Compensation Board is limited to questions of law and to determination of whether or not findings of compensation authorities are supported by substantial evidence. D.C. Code §§ 1-1510 1-1510(3)(E), 46-310 et seq., 46-310(f), 46-311(f). *Washington Post Co. v. District Unemployment Compensation Board*, 379 A.2d 694, 1977 D.C. App. LEXIS 253 (1977).

Review of court of decision of the claims deputies of the District Unemployment Compensation Board is limited to narrow question of whether the Board's findings were supported by substantial evidence on the record considered as a whole. D.C. Code §§ 1-1510(3)(E), 46-310(f). *Washington Post Co. v. District Unemployment Compensation Board*, 377 A.2d 436, 1977 D.C. App. LEXIS 380 (1977).

— Record, unemployment compensation.

Employer's allegations that secretary falsified her daily attendance sheets were not part of record on appeal from decision of Department of Employment Services awarding secretary unemployment compensation, where, although Department stated that its findings were based on review of "statements on appeal," Department thereby referred not to allegations of falsification, which were untimely made and which Department was not authorized to consider, but only to parties' briefs. *Henry J. Kaufman & Associates, Inc. v. District of Columbia Dep't of Employment Services*, 503 A.2d 684, 1986 D.C. App. LEXIS 271 (1986).

— Right to compensation, unemployment compensation.

Decision to leave work is considered voluntary if it is based on volitional act of claimant, rather than compelled by employer. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(a). *Lyons v. District of Columbia Dep't of Empl. Services*, 551 A.2d 1345, 1988 D.C. App. LEXIS 230 (1988).

Employee who left her civilian job as cashier at Air Force base commissary when her husband was reassigned overseas by Air Force voluntarily quit her job without good cause and was thus disqualified from receipt of unemployment compensation benefits, since her leaving was not due to any action on part of her employer; leaving employment to relocate with

spouse, even when decision is prompted by financial considerations, constitutes domestic and personal reason for voluntary quit. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(a). *Lyons v. District of Columbia Dep't of Empl. Services*, 551 A.2d 1345, 1988 D.C. App. LEXIS 230 (1988).

Department of Employment Service's determination that claimant had obtained employment by lying on employment application and that application justified denial of benefits under unemployment compensation law was error where claimant's conviction should have been automatically expunged under Federal Youth Corrections Act and where subsequent court determination expunged claimant's conviction thus making claimant's response to application question whether he had ever been convicted of a felony a truthful statement. D.C. Code 1981, § 1-1510(a); 18 U.S.C. (1982 Ed.) § 5005 et seq. *Barnett v. District of Columbia Dep't of Employment Services*, 491 A.2d 1156, 1985 D.C. App. LEXIS 386 (1985).

Where Department of Employment Services has determined that claimant for unemployment benefits failed to adhere to reporting requirements, and consequently denied unemployment compensation, reviewing court must affirm if the finding is supported by substantial evidence in record. D.C. Code 1981, §§ 1-1510(a)(3), 46-110. *Anthony v. District of Columbia Dep't of Employment Services*, 485 A.2d 605, 1984 D.C. App. LEXIS 574 (1984).

The "good cause connected with the work" requirement for unemployment compensation was not satisfied where applicant left his employment for announced purpose of taking similar job with another company at higher hourly wage and was thereafter informed that job he expected and allegedly had been promised was not available. D.C. Code 1973, § 46-310(a); D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(a). *Gomillion v. District of Columbia Dep't of Employment Services*, 447 A.2d 449, 1982 D.C. App. LEXIS 375 (1982).

Provisions in unemployment compensation statutes referring to "good cause" for failure of claimant to report applied to claimant even though she was living in Belgium and therefore physically absent from jurisdiction; District of Columbia Unemployment Compensation Board erred in failing to consider whether claimant had showed such good cause, and remand was required to permit such consideration. D.C. Code §§ 1-1502(1)(b), 1-1510(3)(A), 46-309(a), d), 46-310(a), 46-316, 46-316(g), 46-416; Reorganization Plan No. 3 of 1967, § 402(358), D.C. Code, Tit. 1, Appendix I; U.S. Const. art. 1, § 10, cl. 3. *Lechter-Siegel v. District Unemployment Compensation Board*, 395 A.2d 57, 1978 D.C. App. LEXIS 362 (1978).

Where outside salesman, despite warnings from his supervisor, on several occasions cut

short his workday to attend to personal affairs without first receiving permission and on those occasions he had, without authorization, released two new employees who had been assigned to him to learn his duties, route and customers, employee breached his contractual duty to devote his entire time, attention and energies to his employment and was guilty of misconduct as a matter of law, justifying denial of unemployment benefits for five weeks. D.C. Code §§ 1-1510, 11-722, 46-310(b), 46-311(f). *Colvin v. District Unemployment Compensation Board*, 306 A.2d 662, 1973 D.C. App. LEXIS 311 (1973).

— Scope of review, unemployment compensation.

Court of Appeals' review of workers' compensation decision of Director of the Department of Employment Services (DOES) is limited to determining whether the Director's order is in accordance with law and supported by substantial evidence in the record, and "substantial evidence" is more than a scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Murray v. District of Columbia Dep't of Empl. Servs.*, 765 A.2d 980, 2001 D.C. App. LEXIS 13 (2001).

Standard of review in unemployment compensation cases is to set aside agency actions found to be not in accordance with law. D.C. Code 1981, §§ 1-1510(a)(3)(A), 46-113. *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

Court of Appeals declined to consider whether Department of Employment Services' determination that unemployment compensation claimant was disqualified from benefits should be affirmed because claimant willfully violated an employer's rule, where both the Department claims deputy and the appeals examiner, whose proposed findings of fact and decision were adopted without change by the agency, relied solely upon a finding of dishonesty and the Department decision contained no finding that the relevant employer's rule existed and was known to claimant, that the rule was reasonable, and that the rule was consistently enforced. *Jadallah v. District of Columbia Dep't of Employment Services*, 476 A.2d 671, 1984 D.C. App. LEXIS 395 (1984).

In the exercise of its review function, the court is obliged to overturn a decision of the district unemployment compensation board when the decision is found to be arbitrary and capricious or not in accordance with law. D.C. Code § 1-1510(3)(B). *Carpenter v. District Unemployment Compensation Board*, 409 A.2d 175, 1979 D.C. App. LEXIS 491 (1979).

In reviewing action of Unemployment Compensation Board, court is required to interpret

statutory provisions when questions arise regarding those provisions. D.C. Code § 1-1510(1). *Haugness v. District Unemployment Compensation Board*, 386 A.2d 700, 1978 D.C. App. LEXIS 381 (1978).

In unemployment compensation cases, Court of Appeals may not abdicate to Board its ultimate responsibility to provide authoritative statutory construction so as to ensure that Board's determination to exclude an entire category of potential claimants, effectively a determination of unemployment compensation policy analogous to a legislative classification, comports with a legislative intent as expressed in the statute itself. D.C. Code §§ 1-1510(1), 46-312. *Cumming v. District Unemployment Compensation Board*, 382 A.2d 1010, 1978 D.C. App. LEXIS 409 (1978).

— Time for appellate proceedings, unemployment compensation.

Notice to unemployment compensation claimant denying claim which misleadingly suggested that late appeals would be accepted with sufficient reason was inadequate as a matter of law, precluding invocation of jurisdictional bar against claimant whose appeal was untimely. D.C. Code 1981, § 1-1510(a)(3)(D). *Bailey v. District of Columbia Dep't of Employment Services*, 499 A.2d 1223, 1985 D.C. App. LEXIS 563 (1985).

— Weight and sufficiency of evidence, unemployment compensation.

If substantial evidence exists to support Director of the Department of Employment Services' (DOES) finding in workers' compensation case, the existence of substantial evidence contrary to that finding does not permit the court to substitute its judgment for the Director's. *Clark v. District of Columbia Dep't of Empl. Servs.*, 772 A.2d 198, 2001 D.C. App. LEXIS 102 (2001).

Hearing examiner's finding that a terminated delivery man's failure to comply with company rule of calling company if he would not be able to make delivery on time was not willful was not supported by substantial evidence, and, thus, delivery man was not entitled to unemployment compensation benefits; delivery man admitted that he did not call until after the delivery deadline and that he was aware of the rules and there was no evidence that the delivery man was stuck in traffic, lost, or unable to find a parking place, except for delivery man's testimony that "maybe" he was stuck in traffic and that he "probably" was lost or couldn't find a parking place. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-101 et seq. *Rosexpress, Inc. v. District of Columbia Dep't of Employment Services*, 602 A.2d 659, 1992 D.C. App. LEXIS 25 (1992).

Agency's affirmation of determination that unemployment compensation benefits claimant was fired for misconduct was not supported by sufficient evidence, only finding of fact ever made on merits of claim was initial claims examiner's finding that claimant was fired for violation of company's policy, but there was no finding as to whether employee was aware of policy, whether policy was consistently enforced, and whether violation was deliberate. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(b)(2). *McCaskill v. District of Columbia Dep't of Employment Services*, 572 A.2d 443, 1990 D.C. App. LEXIS 66 (1990), amended by 1990 D.C. App. LEXIS 128 (D.C. June 6, 1990).

Substantial evidence failed to support decision of Office of Appeals and Review that zoo employee was not terminated for being AWOL. D.C. Code 1981, § 1-1510(a)(3)(E). *Smithsonian Institution v. District of Columbia Dep't of Employment Services*, 514 A.2d 1191, 1986 D.C. App. LEXIS 426 (1986).

Absent factual determination as to claimant's allegation that her assignment with employer continued to require overtime hours, but that employer denied her overtime compensation, final decision of Department of Employment Services' Office of Appeals and Review that claimant left her employment voluntarily without good cause connected with the work, and was therefore not entitled to unemployment benefits, was not based upon substantial evidence, particularly where examiner did not inform claimant of her right to cross-examine during hearing, did not ask whether claimant wished to ask her employer's witness any questions, and did not give claimant opportunity to read missing documents into the record. D.C. Code 1981, §§ 1-1509(b), 1-1510(a)(3)(E), 46-111(a), 46-112(b). *Selk v. District of Columbia Dep't of Employment Services*, 497 A.2d 1056, 1985 D.C. App. LEXIS 478 (1985).

Substantial evidence supported decision of Department of Employment Services that claimant was disqualified from receiving unemployment compensation benefits based on fact that he was discharged for sleeping on the job, even though Department did not consider claimant's evidence that he was terminated in retaliation for pursuing overtime compensation claim and make findings on retaliation issue. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(b). *Grant v. District of Columbia Dep't of Employment Services*, 490 A.2d 1115, 1985 D.C. App. LEXIS 294 (1985).

There was substantial support in record for findings and conclusions of Department of Employment Services that petitioner voluntarily left his position as law clerk in Washington to move to New York and take bar examination there and that he did so without good cause connected with the work. D.C. Code 1981, § 46-111(a). *Gopstein v. District of Columbia Dep't of*

Employment Services, 479 A.2d 1278, 1984 D.C. App. LEXIS 456 (1984).

Requirement that a decision of the Department of Employment Services must be supported by substantial evidence in the record in order to escape being set aside on appeal means more than a mere scintilla but such evidence as a reasonable mind might accept as adequate to support a conclusion. D.C. Code 1981, § 1-1501(a)(3)(E). *Jadallah v. District of Columbia Dep't of Employment Services*, 476 A.2d 671, 1984 D.C. App. LEXIS 395 (1984).

In action seeking unemployment compensation benefits, evidence that claimant unreasonably delayed bringing problem of delayed claim cards to agency's attention, despite having received notice of biweekly reporting requirement, supported determination that claimant was ineligible to receive benefits attributable to his failure to comply with prescribed reporting procedures. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-110(1). *Dunn v. District of Columbia Dep't of Employment Services*, 467 A.2d 966, 1983 D.C. App. LEXIS 506 (1983).

Decision by the director of the Department of Labor that the basis of former employee's discharge from his position was excessive absence and sleeping on the job was without support in the record; rather, evidence from employer's separation statement, findings of the claims deputy, decision of the appeals examiner, and transcript of the hearing established that the actual basis for discharge was job abandonment, as alleged by employer, and therefore was for misconduct, disqualifying him from benefits for 13 weeks under statute. D.C. Code §§ 1-1510, 1-1510(3)(E), 46-310(b). *American University v. District of Columbia Dep't of Labor*, 429 A.2d 1374, 1981 D.C. App. LEXIS 264 (1981).

In view of record indicating that unemployment compensation claimant's failure to return to work was an entirely voluntary decision by claimant who chose to comply with his union's directive to honor another union's picket lines at place of employment and he had been receiving strike benefits, evidence was insufficient to support finding of Unemployment Compensation Board that claimant was eligible for unemployment compensation benefits because he was not unemployed as direct result of labor dispute still in active progress or in participation therein. D.C. Code §§ 1-1510, 1-1510(3)(E), 46-310 et seq., 46-310(f), 46-311(f). *Washington Post Co. v. District Unemployment Compensation Board*, 379 A.2d 694, 1977 D.C. App. LEXIS 253 (1977).

Evidence that claimant, who had been employed as a saleswoman in a department store prior to voluntarily leaving her employment in the District of Columbia and going to rural area in Virginia to live, was willing to drive 10 or 15 miles from her home to work but was unwilling

to drive 25 miles to nearest sizable town where there were many opportunities to find work sustained determination that claimant was not available for work and was not entitled to unemployment compensation. D.C. Code §§ 1-1501, 1-1510, 46-309(d), 46-316. *Hollar v. District Unemployment Compensation Board*, 317 A.2d 868, 1974 D.C. App. LEXIS 399 (1974).

Decision of Unemployment Compensation Board disqualifying petitioner from unemployment benefits because he had been discharged from his most recent employment for misconduct was supported by substantial evidence, notwithstanding claim that testimony of special police officer who allegedly observed petitioner, employed as a loading platform supervisor, gave a sealed carton, later found to contain a television set, to a truck driver without documents changing hands was mere uncorroborated hearsay, where hearsay was uncontradicted and was corroborated by events witnessed by sergeant, by seizure of items personally identified by sergeant, and by statement of petitioner's counsel that petitioner was awaiting criminal action. D.C. Code §§ 1-1501 et seq., 1-1510(3) (E), 46-310(b). *Wallace v. District Unemployment Compensation Board*, 294 A.2d 177, 1972 D.C. App. LEXIS 229 (1972).

Weight and sufficiency of evidence, generally.

The substantial evidence test is satisfied only when an administrative agency fully and clearly explains its decision and demonstrates a rational connection between the facts found and the choice made. *Eagle Maint. Servs. v. D.C. Contract Appeals Bd.*, 893 A.2d 569, 2006 D.C. App. LEXIS 88 (2006).

The Court of Appeals will not disturb the agency's decision if it flows rationally from the facts which are supported by substantial evidence in the record. *Parreco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 2005 D.C. App. LEXIS 540 (2005).

An agency's findings of fact and conclusions of law must be affirmed if they are supported by substantial evidence. *District of Columbia v. Freneau*, 869 A.2d 711, 2005 D.C. App. LEXIS 45 (2005).

"Substantial evidence" to support agency decision is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs.*, 859 A.2d 1058, 2004 D.C. App. LEXIS 514 (2004).

Although the Court of Appeals has adopted a flexible approach that rejects any rigid threshold requirement of competent corroborating evidence, administrative findings and conclusions based exclusively on hearsay are subject to exacting scrutiny, and reversal may be warranted if an agency places undue confidence in

hearsay evidence that is too unreliable to justify the weight given to it. *Compton v. D.C. Bd. of Psychology*, 858 A.2d 470, 2004 D.C. App. LEXIS 456 (2004).

If, after examining the record as a whole, Court of Appeals concludes that the agency's findings are supported by substantial evidence, it must accept those findings even though the record could support a contrary finding. *Zhang v. D.C. Dep't of Consumer & Regulatory Affairs*, 834 A.2d 97, 2003 D.C. App. LEXIS 625 (2003).

Agency decision will be sustained unless it is unsupported by substantial evidence in the record as a whole, and substantial evidence is more than a mere scintilla and constitutes such relevant evidence which a reasonable mind might accept as adequate to support a conclusion. *Mexicano v. D.C. Dep't of Empl. Servs.*, 806 A.2d 198, 2002 D.C. App. LEXIS 517 (2002).

If substantial evidence exists, reviewing court may not substitute its judgment for that of the agency. *Mexicano v. D.C. Dep't of Empl. Servs.*, 806 A.2d 198, 2002 D.C. App. LEXIS 517 (2002).

Substantial evidence to support agency's findings of fact is more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Chase v. D.C. Dep't of Empl. Servs.*, 804 A.2d 1119, 2002 D.C. App. LEXIS 487 (2002).

Regardless of the issue or the type of proceeding, when the Public Service Commission (PSC) makes factual findings based on the record before it, review by the Court of Appeals extends to whether those findings are supported by substantial evidence. *Office of the People's Counsel v. PSC of the Dist. of Columbia*, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

The Court of Appeals will not disturb an agency decision if it rationally flows from the factual findings on which it is based and if those findings are supported by substantial evidence in the record. *Landesberg v. D.C. Dep't of Empl. Servs.*, 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

The mere existence of evidence contrary to a hearing examiner's findings even if substantial does not permit the Court of Appeals to substitute its judgment for that of the agency. *Landesberg v. D.C. Dep't of Empl. Servs.*, 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Credibility determinations of a hearing examiner are accorded special deference by the Court of Appeals. *Landesberg v. D.C. Dep't of Empl. Servs.*, 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

The reviewing court affirms an agency's findings of fact and conclusions if they are supported by substantial evidence in the record. *Kirkpatrick v. D.C. Pub. Schs.*, 786 A.2d 586, 2001 D.C. App. LEXIS 253 (2001).

Court of Appeals will affirm an agency finding of fact or conclusion of law so long as it is supported by substantial evidence, notwithstanding that there may be contrary evidence in the record. *Washington Metro. Area Transit Auth. v. State Dep't of Empl. Servs.*, 770 A.2d 965, 2001 D.C. App. LEXIS 84 (2001).

Agency may not reject an examiner's findings of disputed fact based on the resolution of witness credibility unless the examiner's findings are unsupported by substantial evidence. *District of Columbia v. King*, 766 A.2d 38, 2001 D.C. App. LEXIS 24 (2001).

It is not Court of Appeals' role to reweigh evidence in the record in reviewing an agency decision. D.C. Code 1981, § 1-1510(a)(3). *Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n*, 743 A.2d 1231, 2000 D.C. App. LEXIS 9 (2000).

Under the District of Columbia Administrative Procedure Act (DCAPA), Court of Appeals must sustain the decision of the agency unless it is unsupported by substantial evidence in the record. D.C. Code 1981, § 1-1501 et seq. *Gardner v. District of Columbia Dep't of Empl. Servs.*, 736 A.2d 1012, 1999 D.C. App. LEXIS 197 (1999).

Under the District of Columbia Administrative Procedure Act (DCAPA), Court of Appeals must sustain agency's decision unless it is unsupported by substantial evidence in the record, and "substantial evidence" is more than a mere scintilla and means such relevant evidence as reasonable mind might accept as adequate to support conclusion. D.C. Code 1981, § 1-1501 et seq. *Washington Times v. District of Columbia Dep't of Empl. Servs.*, 724 A.2d 1212, 1999 D.C. App. LEXIS 34 (1999).

Court of Appeals will not disturb agency's decision if it flows rationally from facts which are supported by substantial evidence in record. D.C. Code 1981, §§ 1-1509(e), 1-1510(a)(3)(E). *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs.*, 683 A.2d 470, 1996 D.C. App. LEXIS 214 (1996).

Decisions of hearing examiner are to be given special weight when they depend upon demeanor of witnesses. *Charles P. Young Co. v. District of Columbia Dep't of Empl. Servs.*, 681 A.2d 451, 1996 D.C. App. LEXIS 153 (1996).

Once Court of Appeals is satisfied that administrative agency's findings are sufficient to provide for meaningful review, Court's function in reviewing agency decision is to determine whether there exists rational connection between facts found and choice made, and whether agency's findings of fact are supported by substantial evidence in record considered as whole. D.C. Code 1981, § 1-1510(a)(3)(E). *Kennedy v. District of Columbia*, 654 A.2d 847, 1994 D.C. App. LEXIS 156 (1994).

Mindful that "substantial evidence" means more than mere scintilla, appeals court will uphold administrative agency decision if bottomed on such relevant evidence as reasonable mind might accept as adequate to support conclusion. D.C. Code 1981, § 1-1510(a)(3)(E). *Kennedy v. District of Columbia*, 654 A.2d 847, 1994 D.C. App. LEXIS 156 (1994).

Court of Appeals' review of agency's final decision is directed to question of whether decision is supported by substantial evidence in the record as a whole. D.C. Code 1981, § 1-1510(a)(3)(E). *Mack v. District of Columbia Dep't of Empl. Servs.*, 651 A.2d 804, 1994 D.C. App. LEXIS 235 (1994).

While Court of Appeals' review of agency action is limited in that Court may not substitute its judgment for that of agency, Court is required to set aside agency holdings if they are not supported by substantial evidence in the record. D.C. Code 1981, § 1-1510(a)(3)(E). *Mack v. District of Columbia Dep't of Empl. Servs.*, 651 A.2d 804, 1994 D.C. App. LEXIS 235 (1994).

Court of Appeals will not disturb administrative decision where decision rationally flows from facts relied upon and facts or findings are substantially supported by evidence of record. D.C. Code 1981, § 1-1510(a)(3)(E). *Selk v. District of Columbia Dep't of Employment Services*, 497 A.2d 1056, 1985 D.C. App. LEXIS 478 (1985).

There was substantial evidence to support finding of metropolitan department trial board that police officer was malingering, and superior court erred in setting aside discharge decision. D.C. Code 1981, § 1-1510. *Barry v. Wilson*, 448 A.2d 244, 1982 D.C. App. LEXIS 385 (1982).

"Substantial evidence" under statute governing judicial review of agency decisions means more than mere scintilla, and means such relevant evidence as reasonable mind might accept as adequate to support conclusion. D.C. Code 1981, § 1-1510(a)(3)(E). *Hockaday v. D. C. Dep't of Employment Services*, 443 A.2d 8, 1982 D.C. App. LEXIS 304 (1982).

Superior court must apply "substantial evidence" standard in reviewing decisions of police trial board. D.C. Code 1981, §§ 1-1501 et seq., 1-1510. *Kegley v. District of Columbia*, 440 A.2d 1013, 1982 D.C. App. LEXIS 294 (1982).

When agency findings are assailed on evidentiary grounds, test used by Court of Appeals is whether findings are supported by substantial evidence. D.C. Code 1981, §§ 1-1501 et seq., 1-1510. *Kegley v. District of Columbia*, 440 A.2d 1013, 1982 D.C. App. LEXIS 294 (1982).

An agency's findings of fact are conclusive on the Court of Appeals unless the record is unsupported by "substantial evidence," which is more than a mere scintilla of evidence. D.C. Code § 1-1510. *Liberty v. Police & Firemen's*

Retirement & Relief Bd., 410 A.2d 191, 1979 D.C. App. LEXIS 533 (1979).

Review of administrative decisions requires that the facts flow rationally from the evidence and the conclusions rationally from the facts. D.C.C.E §§ 1-1509(e), 1-1510. *Kober v. District Unemployment Compensation Board*, 384 A.2d 633, 1978 D.C. App. LEXIS 447 (1978).

"Substantial evidence" necessary to support agency's decision means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. D.C. Code § 1-1501 et seq. *Washington Post Co. v. District Unemployment Compensation Board*, 377 A.2d 436, 1977 D.C. App. LEXIS 380 (1977).

Workers compensation proceedings.

Reinstatement remedy ordered by court to rectify District of Columbia's unconstitutional, unpublished system of inadequate notice and procedure regarding disability benefit termination, suspension, and modification was proper notwithstanding government's argument that reinstatement should follow, rather than precede, individualized termination, suspension, or modification process under newly promulgated rules ordered by court because only remedy available to due process violation was nominal damages; reinstatement order was equitable and prospective in nature and not compensatory damages remedy, to extent remedy could possibly be construed as retrospective it was in accordance with well-established precedent, and reinstatement remedies were commonplace under District of Columbia Administrative Procedure Act (DCAPA) and in cases involving multiple plaintiffs or class actions. *Lightfoot v. District of Columbia*, 355 F.Supp.2d 414, 2005 U.S. Dist. LEXIS 1195 (2005).

ALJ's failure to explain her reasoning in arriving at a seven percent permanent partial disability (PPD) award for workers' compensation claimant's work-related knee injury required remand for ALJ to make such additional findings of fact and reasoned conclusions of law that would support the determination of the disability award. *Jones v. D.C. Dep't of Empl. Servs.*, 41 A.3d 1219, 2012 D.C. App. LEXIS 149 (2012).

Conclusion of administrative law judge (ALJ) that workers' compensation claimant failed to prove the existence of a permanent 20% left-leg disability was not arbitrary, capricious, or contrary to law, even though employer did not present a medical expert; opinion letter of claimant's treating physician was cryptic and conclusory, and the record provided a substantial basis for questioning its reliability. *Golding-Alleyne v. D.C. Dep't of Empl. Servs.*, 980 A.2d 1209, 2009 D.C. App. LEXIS 474 (2009).

When the hearing examiner fails to make factual findings on a material contested issue in

a workers' compensation case, appellate court is not permitted to make its own finding on the issue; it must remand for the proper factual finding. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

Even when they might have reached a different result upon an independent review of the record in a workers' compensation case, both the Director of Department of Employment Services and appellate court are bound by the hearing examiner's factual findings. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

In workers' compensation case, Court of Appeals defers to determination of director of Department of Employment Services (DOES) as long as: (1) director's decision states findings of fact on each material, contested, factual issue; (2) those findings are based on substantial evidence in record; and (3) conclusions of law flow rationally from facts. *Sodexo Marriott Corp. v. D.C. Dep't of Empl. Servs.*, 858 A.2d 452, 2004 D.C. App. LEXIS 444 (2004).

Court's deference to determinations of director of Department of Employment Services extends to matters of statutory construction, relenting only where the director's interpretation of the Workers' Compensation Act is unreasonable in light of prevailing law, inconsistent with the statute as a whole, or plainly erroneous. *Orius Telcoms., Inc. v. D.C. Dep't of Empl. Servs.*, 857 A.2d 1061, 2004 D.C. App. LEXIS 417 (2004).

Court defers to the determination of the director of Department of Employment Services as long as the director's decision flows rationally from the facts, and those facts are supported by substantial evidence in the record. *Orius Telcoms., Inc. v. D.C. Dep't of Empl. Servs.*, 857 A.2d 1061, 2004 D.C. App. LEXIS 417 (2004).

Court of Appeals' review of decision by director of Department of Employment Services in workers' compensation case is generally restrained. *Orius Telcoms., Inc. v. D.C. Dep't of Empl. Servs.*, 857 A.2d 1061, 2004 D.C. App. LEXIS 417 (2004).

In reviewing the decision of an agency in a workers' compensation case, Court of Appeals defers to the decision of the Director of Department of Employment Services, so long as the decision is supported by substantial evidence; if there is substantial evidence to support the finding, evidence contrary to that finding does not permit the court to substitute its judgment for that of the Director. *Wash. Post v. D.C. Dep't of Empl. Servs.*, 853 A.2d 704, 2004 D.C. App. LEXIS 372 (2004).

Employer failed to preserve for appellate review claim that hearing examiner erred by considering medical evidence submitted after

evidentiary hearing, where employer never argued to examiner or Director of the Department of Employment Services that the supplemental report was inadmissible, nor did employer seek other relief, such as opportunity to depose physician or to reopen hearing. *Wash. Post v. D.C. Dep't of Empl. Servs.*, 852 A.2d 909, 2004 D.C. App. LEXIS 292 (2004).

Workers' compensation claimant's argument that his application for review of disability order denying his claim for workers' compensation benefits was timely filed based on information given to him by Office of General Counsel advising him that his application for review would be considered timely so long as it was mailed within 30 days from date of compensation order, was not preserved for appellate review, where claimant did not give Director of Department of Employment Services (DOES) notice of such argument. *Thompson v. D.C. Dep't of Empl. Servs.*, 848 A.2d 593, 2004 D.C. App. LEXIS 203 (2004).

The reviewing court must affirm the ruling of the Director of the Department of Employment Services (DOES) unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *Burge v. D.C. Dep't of Empl. Servs.*, 842 A.2d 661, 2004 D.C. App. LEXIS 53 (2004).

The reviewing court defers to the decision of the Director of Department of Employment Services (DOES) in a workers' compensation case, so long as the Director's decision is supported by substantial evidence. *Burge v. D.C. Dep't of Empl. Servs.*, 842 A.2d 661, 2004 D.C. App. LEXIS 53 (2004).

The Court of Appeals' review of the legal conclusions of the Director of the Department of Employment Services in a workers' compensation case is de novo. *Mills v. D.C. Dep't of Empl. Servs.*, 838 A.2d 325, 2003 D.C. App. LEXIS 751 (2003).

Under the Administrative Procedure Act, in workers' compensation cases, the Court of Appeals must determine first, whether the agency has made a finding of fact on each material contested issue of fact; second, whether the agency's findings are supported by substantial evidence on the record as a whole; and third, whether the conclusions of the Director of the Department of Employment Services flow rationally from those findings and comport with the applicable law. *Mills v. D.C. Dep't of Empl. Servs.*, 838 A.2d 325, 2003 D.C. App. LEXIS 751 (2003).

In workers' compensation cases, appellate court defers to the decision of the agency director provided that the decision flows rationally from facts supported by substantial evidence in the record. *Marriott Int'l v. D.C. Dep't of Empl. Servs.*, 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

Appellate court's review of the legal conclusions of Director of the District of Columbia Department of Employment Services (DCDOES) is de novo in workers' compensation case. *Marriott Int'l v. D.C. Dep't of Empl. Servs.*, 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

Appellate court must determine whether the findings of the Director of the District of Columbia Department of Employment Services (DCDOES) in workers' compensation case are supported by substantial evidence on the record as a whole, and whether the Director's conclusions flow rationally from those findings and comport with the applicable law. *Marriott Int'l v. D.C. Dep't of Empl. Servs.*, 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

Appellate court will defer to the workers' compensation determination of the Director of Department of Employment Services as long as the Director's decision flows rationally from the facts, and those facts are supported by substantial evidence in the record. *Lincoln Hockey, LLC v. D.C. Dep't of Empl. Servs.*, 831 A.2d 913, 2003 D.C. App. LEXIS 552 (2003).

Generally, Court of Appeals reviews the legal rulings of the Director of the Department of Employment Services in a workers' compensation case de novo, but otherwise defers to the Director's determination so long as it rationally flows from the facts and is supported by substantial evidence on the record. *Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs.*, 827 A.2d 35, 2003 D.C. App. LEXIS 422 (2003).

The Court of Appeals reviews the decision of the Director of the Department of Employment Services (DOES) to determine whether it is supported by substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in a workers' compensation matter. *Gross v. D.C. Dep't of Empl. Servs.*, 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

The Court of Appeals reviews questions of law de novo, deferring to the interpretation of the workers' compensation statute the Director of the Department of Employment Services (DOES) enforces unless the interpretation conflicts with the statute, is inconsistent with the governing regulation, or otherwise is contrary to established legal doctrine. *Gross v. D.C. Dep't of Empl. Servs.*, 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

The mere existence of evidence contrary to the ALJ's findings, even if substantial, does not permit the Court of Appeals to substitute its judgment for that of the agency in a workers' compensation matter. *Gross v. D.C. Dep't of Empl. Servs.*, 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

The Court of Appeals reviews the decision of the Director of the Department of Employment

Services (DOES) to determine whether it is supported by substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in a workers' compensation matter. *Fred F. Blanken & Co. v. D.C. Dep't of Empl. Servs.*, 825 A.2d 894, 2003 D.C. App. LEXIS 303 (2003).

Finding that memorandum of informal conference became a final award by operation of law when neither employer nor workers' compensation claimant requested a formal hearing within 34 days after memorandum was issued was material error, where regulation establishing 34-day period for requesting hearing was enacted four years after memorandum was issued, and prior version of regulation did not state that memorandum of informal conference could become final as a matter of law. *Moore v. D.C. Dep't of Empl. Servs.*, 813 A.2d 227, 2002 D.C. App. LEXIS 734 (2002).

The Court of Appeals reviews decisions of the Department of Employment Services (DOES) in workers' compensation cases based on the substantial evidence standard; the Court must affirm if the Director's factual determinations are based on substantial evidence. *Epstein, Becker & Green v. D.C. Dep't of Empl. Servs.*, 812 A.2d 901, 2002 D.C. App. LEXIS 742 (2002), remanded by 850 A.2d 1140, 2004 D.C. App. LEXIS 272 (D.C. 2004).

When reviewing a decision in a workers' compensation case by the Director of Department of Employment Services (DOES), Court of Appeals looks to see: (1) whether the agency has made a finding of fact on each material contested issue of fact; (2) whether substantial evidence of record supports each finding; and (3) whether the conclusions of law follow rationally from the findings. *Cather v. D.C. Dep't of Empl. Servs.*, 808 A.2d 766, 2002 D.C. App. LEXIS 558 (2002).

It is the final decision of the Director of the Department of Employment Services (DOES) in a workers' compensation matter, not the hearing examiner's, which may be reviewed in the Court of Appeals. *Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs.*, 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

The Court of Appeals reviews the legal rulings of the Director of the Department of Employment Services (DOES) in a workers' compensation matter de novo, but otherwise defers to the Director's determination so long as it rationally flows from the facts and is supported by substantial evidence on the record. *Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs.*, 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

The decision of the Director of the Department of Employment Services (DOES) that employer's evidence was insufficient to rebut the presumption of compensability presented a question of law that the Court of Appeals would

review de novo, which in turn depended on an issue of interpretation of the evidence, as to which the Court defers. *Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs.*, 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

Court of Appeals's task on review of a workers' compensation order is generally limited to determining whether there is substantial evidence to support the final decision of the Department of Employment Services (DOES). *Fontenot v. D.C. Dep't of Empl. Servs.*, 804 A.2d 1104, 2002 D.C. App. LEXIS 484 (2002).

Substantial evidence to support workers' compensation decision of Department of Employment Services (DOES) is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Fontenot v. D.C. Dep't of Empl. Servs.*, 804 A.2d 1104, 2002 D.C. App. LEXIS 484 (2002).

Substantial evidence did not support Department of Employment Services (DOES) appeal examiner's finding of fact that claimant's disabling medical condition, hypertension and stress, arose more than three years before date of injury, so as to support his conclusion that evidence overcame presumption that claimant's injuries arose from his employment; although finding was based primarily on form by claimant's personal physician dated prior to date of injury, there was evidence that form was most likely misdated, and examiner relied on form without addressing its patent weaknesses. *Fontenot v. D.C. Dep't of Empl. Servs.*, 804 A.2d 1104, 2002 D.C. App. LEXIS 484 (2002).

The Court of Appeals is limited to determining whether an order of Director of Department of Employment Services (DOES) is in accordance with the law and supported by substantial evidence in the record. *Landesberg v. D.C. Dep't of Empl. Servs.*, 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

The Court of Appeals will affirm a ruling of Director of Department of Employment Services (DOES) unless it is arbitrary, capricious, or otherwise an abuse of discretion and not in accordance with the law. *Landesberg v. D.C. Dep't of Empl. Servs.*, 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

In a workers' compensation case, the Court of Appeals defers to the determination of the Director of the Department of Employment Services as long as the director's decision flows rationally from the facts which are supported by substantial evidence in the record. *White v. D.C. Dep't of Empl. Servs.*, 793 A.2d 1255, 2002 D.C. App. LEXIS 63 (2002).

Reviewing court would not consider whether claimant's back condition was medically causally related to a workplace accident on a particular date in which claimant had injured her neck, where claimant had failed to present the Department of Employment Services with a back-injury claim based on the accident and

instead had explicitly conceded to the Department that the back condition was not medically causally related to the accident. *Waugh v. D.C. Dep't of Empl. Servs.*, 786 A.2d 595, 2001 D.C. App. LEXIS 252 (2001).

The reviewing court must sustain the decision of the Director of the Department of Employment Services denying workers' compensation benefits unless it is unsupported by substantial evidence in the record as a whole. *Waugh v. D.C. Dep't of Empl. Servs.*, 786 A.2d 595, 2001 D.C. App. LEXIS 252 (2001).

In a workers' compensation case, the Court of Appeals defers to the determination of the Director of the Department of Employment Services, as long as the Director's decision flows rationally from the facts, and those facts are supported by substantial evidence on the record. *Upchurch v. D.C. Dep't of Empl. Servs.*, 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

In workers' compensation cases, Department of Employment Services (DOES) must make findings on the pivotal facts at issue, which are then accorded great deference on review. *Pro-Football, Inc. v. District of Columbia Dep't of Empl. Servs.*, 782 A.2d 735, 2001 D.C. App. LEXIS 217 (2001).

Remand to Department of Employment Services (DOES) was required for a determination of whether employer and insurer were entitled to Special Fund relief under the Workers' Compensation Act for their paying lump-sum settlement to claimant who had a pre-existing condition, which resulted in a substantially greater disability; Department misread case when deciding relief was not warranted, and further proceedings were required for it to conduct independent statutory analysis and reasoning. *Genstar Stone Prods. Co. v. Dep't of Empl. Servs.*, 777 A.2d 270, 2001 D.C. App. LEXIS 150 (2001).

Substantial evidence review utilized by the Director of the Department of Employment Services (DOES) on a hearing examiner's decision presents an issue of law which a reviewing court is in a position to address without need for deference to the agency's decision. *Muhammad v. District of Columbia Dep't of Empl. Servs.*, 774 A.2d 1107, 2001 D.C. App. LEXIS 171 (2001).

It is the final decision of the Director of the Department of Employment Services (DOES), not the hearing examiner's decision, which may be reviewed by the Court of Appeals. *Muhammad v. District of Columbia Dep't of Empl. Servs.*, 774 A.2d 1107, 2001 D.C. App. LEXIS 171 (2001).

To meet the substantial evidence standard of review utilized by the Director of the Department of Employment Services (DOES) on a hearing examiner's decision: (1) the hearing examiner's underlying decision must state find-

ings of fact on each material, contested factual issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law must follow rationally from the findings. *Muhammad v. District of Columbia Dep't of Empl. Servs.*, 774 A.2d 1107, 2001 D.C. App. LEXIS 171 (2001).

Remand of workers' compensation case was necessary since hearing examiner and the Director of Department of Employment Services (DOES) failed to take into consideration or explain the reasons for rejecting the deposition testimony of claimant's treating physician. *Clark v. District of Columbia Dep't of Empl. Servs.*, 772 A.2d 198, 2001 D.C. App. LEXIS 102 (2001).

In workers' compensation case, court defers to the determination of the Director of the Department of Employment Services (DOES) as long as the Director's decision flows rationally from the facts and those facts are supported by substantial evidence on the record, and if so, the court's consideration ends. *Clark v. District of Columbia Dep't of Empl. Servs.*, 772 A.2d 198, 2001 D.C. App. LEXIS 102 (2001).

Where Court of Appeals reviews workers' compensation decision of Director of the Department of Employment Services reversing hearing examiner's decision, Court must consider whether Director exercised proper restraint in his review. *Pickrel v. District of Columbia Dep't of Empl. Servs.*, 760 A.2d 199, 2000 D.C. App. LEXIS 233 (2000).

Court of Appeals reviews final workers' compensation decision of the Director of the Department of Employment Services (DOES) to determine whether it is supported by substantial evidence. D.C. Code 1981, § 1-1510(a)(3)(E). *Morrison v. District of Columbia Dep't of Empl. Servs.*, 736 A.2d 223, 1999 D.C. App. LEXIS 188 (1999).

Forty-five day requirement was directory, and not mandatory, for purposes of statute providing that applications for review of workers' compensation orders shall be made within 30 days from date that order is filed and final decisions issued pursuant to such review shall be rendered within 45 days from date of application; as such, Director of Department of Employment Services (DOES) had jurisdiction to issue a decision almost three years after the hearing examiner's order. D.C. Code 1981, § 36-322(b)(2). *Washington Hosp. Ctr. v. District of Columbia Dep't of Empl. Servs.*, 712 A.2d 1018, 1998 D.C. App. LEXIS 115 (1998).

Scope of review of modification issues in workers' compensation case requires Court of Appeals to decide whether the agency made the threshold determination under the statute regarding change in claimant's condition and whether its determination is supported by substantial evidence in the record. D.C. Code 1981,

§§ 1-1510(a)(3), 36-324. *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Empl. Servs.*, 703 A.2d 1225, 1997 D.C. App. LEXIS 264 (1997).

Court of Appeals reviews decision of Director of Department of Employment Services in a workers' compensation case, considering whether decision is supported by substantial evidence, and making sure that Director has accorded proper deference to hearing examiner's fact-finding role; however, Director's legal conclusions are reviewed *de novo*, keeping in mind that when statutory language is not entirely clear, Court ordinarily defers to Director's interpretation of governing statute and agency's own regulations. D.C. Code 1981, §§ 1-1509(e), 1-1510(a)(3)(E). *KOH Sys. v. District of Columbia Dep't of Empl. Servs.*, 683 A.2d 446, 1996 D.C. App. LEXIS 202 (1996).

When reviewing workers' compensation decision by Department of Employment Services (DOES), Court of Appeals cannot retry facts or rehear evidence. *Charles P. Young Co. v. District of Columbia Dep't of Empl. Servs.*, 681 A.2d 451, 1996 D.C. App. LEXIS 153 (1996).

Substantial evidence supported hearing examiner's ruling that workers' compensation claimant's employment at time of injury was "principally localized" in District of Columbia, such that District of Columbia would have jurisdiction over claim. D.C. Code 1981, §§ 1-1510(a)(3)(E), 36-303(a). *Regional Constr. Co. v. District of Columbia Dep't of Employment Services*, 600 A.2d 1077, 1991 D.C. App. LEXIS 339 (1991), writ of certiorari denied by 505 U.S. 1206, 112 S. Ct. 2997, 120 L. Ed. 2d 873, 1992 U.S. LEXIS 3767, 60 U.S.L.W. 3858 (1992).

On review of workers' compensation ruling of Director of Department of Employment Services, reviewing court must affirm ruling unless it concludes that ruling was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. D.C. Code 1981, § 1-1510(a)(3). *Teal v. District of Columbia Dep't of Employment Services*, 580 A.2d 647, 1990 D.C. App. LEXIS 228 (1990).

Director of Department of Employment Services could not, under regulation, reverse part of a workers' compensation order based on medical evidence received after completion of initial hearing, because of employer's opposition to admission of evidence, without reviewing relevancy and materiality of such evidence. D.C. Code 1981, §§ 1-1510, 11-722, 36-320(c). *Jones v. District of Columbia Dep't of Employment Services*, 553 A.2d 645, 1989 D.C. App. LEXIS 11 (1989).

Court will uphold agency's interpretation of Workers' Compensation Act, unless interpretation is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. D.C. Code 1981, §§ 1-1510, 11-722, 36-301 et seq. *Smith v. District of Columbia Dep't of*

Employment Services, 548 A.2d 95, 1988 D.C. App. LEXIS 172 (1988).

Hearing examiner's finding that claimant's temporary total disability extended beyond one month from date of her fall was supported by examining physician's testimony that claimant was disabled for additional seven months based upon her subjective complaints of pain, evidence of mechanical instability or improper muscle formation of claimant's back, and comparison of cervical x-rays showing evidence of degenerative changes that were probably related to, though not completely caused by, trauma of her injury; thus, Director's ruling limiting benefits to one-month period was not in accordance with law. D.C. Code 1981, § 1-1510(a)(3)(A). *Santos v. District of Columbia Dep't of Employment Services*, 536 A.2d 1085, 1988 D.C. App. LEXIS 12 (1988).

Hearing examiner's finding that claimant's disability terminated on date of her visit to physician, based entirely upon physician's deposition testimony that he had seen claimant enter car unaided after purportedly having been able to move about his examining room without help, was not supported by substantial evidence and would not be deferred to. D.C. Code 1981, § 1-1510(a)(3)(E). *Santos v. District of Columbia Dep't of Employment Services*, 536 A.2d 1085, 1988 D.C. App. LEXIS 12 (1988).

Medical testimony that claimant was not disabled from either orthopedic or psychological standpoint supported denial of claim for total permanent disability. D.C. Code 1981, § 1-1510(a)(3)(E). *Dunston v. District of Columbia Dep't of Employment Services*, 509 A.2d 109, 1986 D.C. App. LEXIS 336 (1986).

Construction of statute on supplemental workers' compensation benefits by Department of Employment Services was entitled to judicial deference because it was one basic to agency's function of awarding compensation. D.C. Code 1981, §§ 1-1510(a)(3), 36-303(a)(1). *Dunston v. District of Columbia Dep't of Employment Services*, 509 A.2d 109, 1986 D.C. App. LEXIS 336 (1986).

In reviewing decision of Department of Employment Services, judicial review is limited to determining whether agency order disqualifying former employee for workers' compensation benefits was in accordance with law and supported by substantial evidence in record. D.C. Code 1981, §§ 1-1510(a)(3)(A, E), 36-322(b)(3). *Joyner v. District of Columbia Dep't of Employment Services*, 502 A.2d 1027, 1986 D.C. App. LEXIS 260 (1986).

Zoning and planning.

— Decisions reviewable, zoning and planning.

In the absence of exceptional circumstances, the Court of Appeals will not entertain conten-

tions not raised before the board of zoning adjustment (BZA). *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Board of Zoning Adjustment order approving university's plan for campus development during 15-year period had sufficient attributes of finality to permit appellate review; order was consummation of plan approval process and made clear that all future applications for special exceptions would be measured for their consistency with plan, regardless of whether they were in special purpose districts or in residential zoning districts. D.C. Code 1981, §§ 1-1501 et seq., 1-1502(11), 1-1510(a). *Levy v. District of Columbia Bd. of Zoning Adjustment*, 570 A.2d 739, 1990 D.C. App. LEXIS 36 (1990).

Because hotel owner did not initially invoke the appellate jurisdiction of the Board of Appeals and Review over revocation by the Department of Licenses, Investigations, and Inspections of a permit for a neon sign atop his hotel, Court of Appeals had to dismiss, for lack of jurisdiction, that part of hotel owner's petition for review challenging the Department's revocation of the permit; in declining to appeal the Department's revocation to the Board, hotel owner failed to create a "contested case" as to that issue. D.C. Code 1981, §§ 1-1502(8), 1-1509, 1-1510. *Auger v. D.C. Bd. of Appeals & Review*, 477 A.2d 196, 1984 D.C. App. LEXIS 370 (1984).

Approval of a preliminary application for a planned unit development was a contested case under the District of Columbia's Administrative Procedure Act and is properly reviewable as a final order. D.C. Code § 1-1510. *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm.*, 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

Court of Appeals has jurisdiction to review decisions of the Zoning Commission in accordance with the Administrative Procedure Act, limited only to those decisions or orders entered in contested cases. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1510, 11-722. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Comm.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

When Zoning Commission exercised its authority to determine needs of area by denying without public hearing a proposed amendment to zoning maps to change zoning classification of property the Commission was acting legislatively and was not subject to the "contested case" provisions of Administrative Procedure Act, with the result that such decision was not subject to direct review by the Court of Appeals, despite contention of property owner that mere submission of proposed amendment, and the subsequent rejection of same, constituted a

"hearing" required by law, and thus was subject to review. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1510, 5-415, 11-722. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Comm.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

Where the Zoning Commission sits in a legislative capacity, making a policy decision directed toward the general public, its proceeding is without the contested case provision of the Administrative Procedure Act, as regards judicial review. D.C. Code §§ 1-1501 to 1-1510. *Citizens Ass'n of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

A proceeding before the Zoning Commission on amendments relating to an area of a city lacks the specificity of subject matter and result, indicative of an adjudicatory proceeding; the proceeding is a quasi-legislative hearing conducted for the purpose of obtaining facts and information, and views of the public pertinent to the resolution of a policy decision, and thus, is not a contested case within the judicial review provisions of the Administrative Procedure Act. D.C. Code §§ 1-1501 to 1-1510. *Citizens Ass'n of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

— In general.

Absent a material procedural impropriety or error of law, the Zoning Commission's decision regarding a proposed university campus plan stands so long as it rationally flows from findings of fact supported by substantial evidence in the record as a whole. *Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

Tenants association, which was not a party to Zoning Commission proceedings, was not estopped from presenting claims to Court of Appeals, where association's claims were raised before Commission, just not by association itself. *Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

Court of Appeals may not substitute its own judgment for that of the Board of Zoning Appeals so long as there is a rational basis for the Board's decision. *Rodgers Bros. Custodial Servs. v. D.C. Bd. of Zoning Adjustment*, 846 A.2d 308, 2004 D.C. App. LEXIS 159 (2004).

University waived its argument that the board of zoning adjustment (BZA) had no business regulating the operations of a university, rather than regulating its use of land; in its own proposal, the university invited the BZA to regulate university operations by making compliance with the Off-Campus Student Affairs Program (OCSAP) an enforceable part of the BZA's order, and the university could not now

be permitted to make a 180-degree turn. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

On appeal of decision by board of zoning adjustment (BZA), the Court of Appeals must determine whether (1) the agency made a finding of fact on each material contested issue of fact; (2) substantial evidence in the record supports each finding; and (3) the conclusions of law follow rationally from the findings. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

The Board of Zoning Adjustment (BZA) must elaborate, with precision, its response to advisory neighborhood commission (ANC) issues and concerns, and articulate why the particular ANC itself, given its vantage point, does or does not offer persuasive advice under the circumstances. *Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment*, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

While the Board of Zoning Adjustment (BZA) is not required to defer to an advisory neighborhood commission's (ANC's) views, failure to address ANC concerns with particularity is grounds for a remand. *Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment*, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

Requirement of rule of board of zoning adjustment (BZA) that an appeal of zoning decision be timely is jurisdictional. *Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 2001 D.C. App. LEXIS 140 (2001).

Because the rules of the board of zoning adjustment (BZA) adopt no specific time limit on appeals, a standard of reasonableness is applied in determining whether an appeal is timely; reasonableness is a standard that requires due consideration of attendant facts and circumstances that legitimately may bear on the particular appellant's ability to seek review. *Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 2001 D.C. App. LEXIS 140 (2001).

Although what constitutes reasonable time to appeal a zoning decision to the board of zoning adjustment (BZA) may depend on the circumstances, the question should not be decided on an ad hoc basis. *Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 2001 D.C. App. LEXIS 140 (2001).

A reasonable time in which to appeal zoning decision is measured by the time that fairness dictates to enable an aggrieved party to evaluate the appropriateness of seeking review, to obtain the assistance of counsel, and to take the other steps necessary to proceed. *Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 2001 D.C. App. LEXIS 140 (2001).

In the absence of exceptional circumstances substantially impairing the ability of an aggrieved party to appeal, that is, circumstances outside the party's control, two months between notice of a zoning decision and appeal therefrom is the limit of timeliness. *Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 2001 D.C. App. LEXIS 140 (2001).

Appeal from denial of property owner's application to zoning commission to modify planned unit development did not provide appropriate forum for adjudicating issue of whether proposed construction was consistent with planned unit development as originally created; property owners were free to litigate this issue in context of challenge to revocation of building permit. *Rafferty v. District of Columbia Zoning Comm'n*, 583 A.2d 169, 1990 D.C. App. LEXIS 287 (1990).

Conclusion of the board of zoning adjustment that appeal taken two months after letter of zoning administrator reflecting opinion that petitioner could construct a kiln at rear of her pottery shop without a permit was timely was neither arbitrary, an abuse of discretion, or otherwise not in accordance with law. D.C. Code § 1-1510(3)(A). *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, 1980 D.C. App. LEXIS 402 (1980).

Where board of zoning adjustment had relied on a number of valid factors which might well sustain its conclusion, but reviewing court could not be sure that board would have reached same conclusion had it not relied on erroneous finding of fact, remand was necessary. D.C. Code § 1-1510. *Citizens Asso. of Georgetown v. District of Columbia Board of Zoning Adjustment*, 403 A.2d 737, 1979 D.C. App. LEXIS 403 (1979).

Under statute requiring board of zoning adjustment to give great weight to issues and concerns raised in recommendations of advisory neighborhood commission, substantial compliance with statute is required for cases in which administrative precision preceded date of judicial decision holding that board was required to elaborate with precision responses to each concern raised by advisory neighborhood commission. D.C. Code §§ 1-171i(d), 1-1510. *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 1978 D.C. App. LEXIS 577 (1978).

For purposes of rule requiring substantial compliance with requirements of statute providing that issues and concerns raised in recommendations of advisory neighborhood commission shall be given great weight by board of zoning adjustment, "substantial compliance" is such compliance with essential requirements of statutory provision as may be sufficient for accomplishment of purposes thereof; it means actual compliance in respect to substance essential to every reasonable objective of statute.

D.C. Code §§ 1-171i(d), 1-1510. *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 1978 D.C. App. LEXIS 577 (1978).

Controversy which arose out of zoning commission's actions in granting change in zoning so as to permit townhouse development, which action followed an adjudicatory hearing, was a "contested case" so that Court of Appeals had jurisdiction to review the action. D.C. Code § 1-1510. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Board of Zoning Adjustment's findings of fact which were devoid of any delineation of factors weighed in reaching its conclusions of law thereby precluding determination on review as to which factors or considerations influenced Board's decision were inadequate and required remand to Board for proper entry of findings of fact and conclusions of law. D.C. Code §§ 1-1509, 1-1510. *Shay v. District of Columbia Board of Zoning Adjustment*, 334 A.2d 175, 1975 D.C. App. LEXIS 346 (1975).

District of Columbia Administrative Procedure Act is applicable to proceedings before the Zoning Commission. D.C. Code §§ 1-1501 et seq., 1-1509, 11-722. *Capitol Hill Restoration Soc. v. Zoning Com.*, 287 A.2d 101, 1972 D.C. App. LEXIS 339 (1972).

— Modification of regulations generally, zoning and planning.

Where following amendment of District of Columbia zoning map but prior to appellate review, zoning laws were amended to require that maps and amendments not be inconsistent with comprehensive plan for the National Capital, the amended law was to be applied and the amendment examined for conformity to the comprehensive plan. D.C. Code §§ 1-1510, 5-414, 5-415, 11-707(a), 11-722. *Capitol Hill Restoration Soc. v. Zoning Com.*, 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

District of Columbia Zoning Commission must accord substantial weight and respect to the National Planning Commission's statutorily authorized commentary on proposed maps, regulations and amendments to the comprehensive plan; the record must contain a strong basis for resort to a different interpretation. D.C. Code §§ 1-1002, 1-1004(a), 1-121, 1-126, 1-1001 et seq., 1-1002(a)(4), (a)(4)(D, F), (e), 1-1008(a), 1-1510, 5-413, 5-414; U.S. Const. art. 1, § 8, cl. 17. *Capitol Hill Restoration Soc. v. Zoning Com.*, 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

— Operation and effect of regulations, zoning and planning.

Court of Appeals defers to the interpretation of the Board of Zoning Appeals of the zoning regulations and must uphold that interpretation unless it is plainly erroneous or inconsis-

tent with the regulations and governing statute. *Rodgers Bros. Custodial Servs. v. D.C. Bd. of Zoning Adjustment*, 846 A.2d 308, 2004 D.C. App. LEXIS 159 (2004).

The Court of Appeals has a duty to reject an interpretation by the Board of Zoning Adjustment (BZA) which contradicts the plain language of the regulation itself. *Chagnon v. D.C. Bd. of Zoning Adjustment*, 844 A.2d 345, 2004 D.C. App. LEXIS 66 (2004).

With respect to zoning regulation requiring for high school and accessory uses two parking spaces for each three teachers plus one for each 20 classroom seats "OR" one for each ten auditorium seats whichever is greater, it was reasonable for board of zoning adjustment to consider "OR" as dividing line between alternatives so that number of parking spaces required was either "two for each three teachers plus one for each 20 classroom seats" or "one for each ten auditorium seats," whichever alternative was greater. D.C. Code §§ 1-1501 et seq., 1-1510. *Dietrich v. District of Columbia Board of Zoning Adjustment*, 320 A.2d 282, 1974 D.C. App. LEXIS 217 (1974).

Board of zoning adjustment's construction of zoning commission's regulations to include high school gymnasium within high school and accessory use provision of regulations for purposes of determining number of parking spaces required rather than as a place of public assemblage was not plainly erroneous or inconsistent with regulations. D.C. Code §§ 1-1501 et seq., 1-1510. *Dietrich v. District of Columbia Board of Zoning Adjustment*, 320 A.2d 282, 1974 D.C. App. LEXIS 217 (1974).

— Permits, certificates and approvals, zoning and planning.

There was substantial evidence in record to support board of zoning adjustment's (BZA) decision capping full-time student enrollment based on averaging the number of full-time students enrolled during fall and spring semesters at university, and that averaging, for purposes of establishing enrollment cap, flowed rationally from the BZA's findings; while there might be some difference in enrollment numbers in fall and spring, the differences between hard enrollment cap and blended enrollment cap advocated by university would not have adverse impact on surrounding community, and university presented substantial evidence regarding how it calculated its full-time student enrollment and how averaging fall and spring enrollment figures was part of that calculation. *Citizens Ass'n of Georgetown v. D.C. Bd. of Zoning Adjustment*, 925 A.2d 585, 2007 D.C. App. LEXIS 326 (2007).

Zoning Commission did not act arbitrarily and capriciously in approving off-campus university parking plan without specifying the means by which it would be enforced, such as

by parking stickers; university remained subject to continuing oversight by Zoning Commission and faced prospect of serious consequences if it failed to fulfill its obligations. *Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

Zoning Commission did not act arbitrarily, capriciously, or contrary to law when it approved university's proposed student cap of 10,600, although number was higher than base count of previous plan; prior plan had ceiling of 11,233 students and had established base count which university was allowed to exceed by up to eight percent, and new plan lowered not-to-be-exceeded enrollment figure by 633 students. *Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

Zoning Commission's failure to articulate with particularity and precision, in approval of university's campus plan, why it rejected advisory neighborhood commission-supported recommendation that students and others affiliated with university be required to have parking stickers in order to facilitate enforcement of the plan required remand. *Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

Neighbor's delay of several months before appealing building permits for homeowner's addition and garage renovation was not unreasonable, and, thus, laches did not bar appeal to Board of Zoning Adjustment; the delay resulted from the fact that the homeowner applied for separate building permits for each component of the construction on his property. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

Zoning commission was required to make findings with respect to equitable issues of estoppel and laches as well as property owner's claim regarding deficiencies in procedures of advisory neighborhood commission in opposing property owner's application to modify architectural plans of previously approved planned unit development in order for Court of Appeals to review zoning commission's decision denying application, where issues of estoppel, laches and procedural defects were raised before zoning commission by parties and on commission's own initiative. D.C. Code 1981, § 1-1509(e). *Rafferty v. District of Columbia Zoning Comm'n*, 583 A.2d 169, 1990 D.C. App. LEXIS 287 (1990).

Board of Zoning Adjustment did not exceed its jurisdiction in reversing Zoning Administrator's ruling that property met the minimum average width requirement for lots situated in particular zoning district, though it was not alleged or found that Administrator's interpretation was "erroneous or inconsistent with the

Zoning Regulations," where Board found that Zoning Administrator's method of calculating lot width resulted in "erroneous measurement" and the lot did not have required minimum average width. D.C. Code 1981, § 1-1510(a). *Murray v. District of Columbia, Bd. of Zoning Adjustment*, 572 A.2d 1055, 1990 D.C. App. LEXIS 79 (1990).

— Scope of review, zoning and planning.

Court reviewing decision of District of Columbia zoning commission has duty to assure that proceedings before the commission were essentially fair. D.C. Code § 1-1501 et seq.; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

In reviewing action of District of Columbia zoning commission, district court is not required to hold a trial de novo nor may it substitute its view of the evidence before the commission for that of the commission. D.C. Code § 1-1501 et seq.; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Appellate court will uphold the findings of board of zoning adjustment (BZA) if they are based on substantial evidence as a whole. *Citizens Ass'n of Georgetown v. D.C. Bd. of Zoning Adjustment*, 925 A.2d 585, 2007 D.C. App. LEXIS 326 (2007).

When reviewing an order of the zoning commission, like decisions of other agencies, the Court of Appeals gives great deference to the agency's findings supporting the decision; the Court does not reassess the merits of the decision, but instead determines whether the findings and conclusions were arbitrary, capricious, or an abuse of discretion, or not supported by substantial evidence. *Wash. Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

The court is obliged to affirm the Zoning Commission's conclusions so long as they are rational and not arbitrary or capricious. *Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

Review of a Zoning Commission order approving a campus plan is limited to determining whether the decision is arbitrary, capricious, or otherwise not in accordance with law. *Spring Valley - Wesley Heights Citizens Ass'n v.*

D.C. Zoning Comm'n, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

Generally, Court of Appeals' review of the factual determinations of the board of zoning adjustment (BZA) is deferential. *Lovendusky v. D.C. Bd. of Zoning Adjustment*, 852 A.2d 927, 2004 D.C. App. LEXIS 304 (2004).

The Court of Appeals must uphold the validity of the findings of the board of zoning adjustment (BZA) if they are supported by and in accordance with reliable, probative, and substantial evidence, which is relevant evidence which a reasonable trier of fact would find adequate to support a conclusion. *Lovendusky v. D.C. Bd. of Zoning Adjustment*, 852 A.2d 927, 2004 D.C. App. LEXIS 304 (2004).

The Court of Appeals will not reverse the conclusions of the board of zoning adjustment (BZA) unless they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *Lovendusky v. D.C. Bd. of Zoning Adjustment*, 852 A.2d 927, 2004 D.C. App. LEXIS 304 (2004).

Court of Appeals must uphold decisions made by the Board of Zoning Appeals if they rationally flow from findings of fact supported by substantial evidence in the record as a whole. *Rodgers Bros. Custodial Servs. v. D.C. Bd. of Zoning Adjustment*, 846 A.2d 308, 2004 D.C. App. LEXIS 159 (2004).

Review of the board of zoning adjustment's (BZA) factual determinations is deferential requiring the Court of Appeals to affirm if the factual findings are based on substantial evidence in the record as a whole. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

The Court of Appeals must affirm factual findings of the board of zoning adjustment (BZA) if they are based on substantial evidence in the record as a whole. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

The conclusions of the board of zoning adjustment (BZA) must be sustained unless they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

The Court of Appeals must uphold decisions made by the Board of Zoning Adjustment (BZA) if they rationally flow from findings of fact supported by substantial evidence in the record as a whole. *Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment*, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

The Court of Appeals may not substitute its own judgment for that of the Board of Zoning Adjustment (BZA) so long as there is a rational basis for the BZA's decision. *Watergate W., Inc.*

v. D.C. Bd. of Zoning Adjustment, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

The Board of Zoning Adjustment's judgment is entitled to additional deference where it is interpreting its own internal rule of procedure, rather than the zoning regulations. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

While the Court of Appeals gives deference to the Board of Zoning Adjustment's findings with respect to laches, the question whether the facts, taken together, are sufficient to sustain the defense of laches is one of law to be answered de novo by the appellate court. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

In reviewing a decision of the Board of Zoning Adjustment, the Court of Appeals must determine whether (1) the agency has made a finding of fact on each material contested issue of fact; (2) substantial evidence of record supports each finding; and (3) conclusions legally sufficient to support the decision flow rationally from the findings. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

The Court of Appeals cannot substitute its judgment for that of the Board of Zoning Adjustment. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

Board of Zoning Adjustment (BZA) is charged with interpreting the zoning regulations, and the courts must defer to the BZA's interpretation of those regulations, related to matters within its expertise, unless that interpretation is plainly wrong or inconsistent with the regulations or with the statute under which the BZA acts. *District of Columbia v. L.G. Indus.*, 758 A.2d 950, 2000 D.C. App. LEXIS 204 (2000).

Applicants for special exceptions to open mental health offices in condominium complex were not prejudiced by any error in the Board of Zoning Adjustment's failure to issue a proposed order prior to their denial of the applications, where applicants filed a motion to reconsider and had ample opportunity to convince the Board that its initial order was erroneous. *D.C. Code 1981, §§ 1-1509(d), 1-1510(b)*. *Gage v. District of Columbia Bd. of Zoning Adjustment*, 738 A.2d 1219, 1999 D.C. App. LEXIS 238 (1999).

Court of Appeals' standard of review for orders of board of zoning adjustment is whether agency made findings of facts on each material contested issue of fact, substantial evidence supported each finding, and board's conclusions flow rationally from its findings of fact. *D.C. Code 1981, § 1-1510(a)(3)(E)*. *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1995 D.C. App. LEXIS 96 (1995),

amended by 1995 D.C. App. LEXIS 102 (D.C. May 16, 1995).

Decisions made by Board of Zoning Adjustment must be upheld on appeal if they rationally flow from findings of fact supported by substantial evidence in record as a whole. D.C. Code 1981, §§ 1-1509(e), 1-1510(a)(3)(E). *Draude v. District of Columbia Bd. of Zoning Adjustment*, 582 A.2d 949, 1990 D.C. App. LEXIS 281 (1990).

Review of order of District of Columbia Board of Zoning Adjustment focuses upon determination of whether Board's decision follows from its findings and whether its findings are supported by substantial evidence of record. D.C. Code 1973, § 1-1510(3)(E). *First Baptist Church v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 1981 D.C. App. LEXIS 287 (1981).

On review from order of Board of Zoning Adjustment concluding that a property owner has not abandoned his right to nonconforming use, court must determine whether the agency has made a finding of fact on each material contested issue of fact or whether substantial evidence of record supports each finding, and whether the conclusions of law follow rationally from the findings. D.C. Code §§ 1-1509(e), 1-1510(3)(A, E). *George Washington University v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1342, 1981 D.C. App. LEXIS 254 (1981).

Applicable standard of review for board of zoning adjustment cases was whether decision followed as matter of law from facts stated as basis and whether facts so stated had any substantial support in the evidence, in which case reviewing court would affirm even though it might have reached another result. D.C. Code § 1-1510. *Citizens Asso. of Georgetown v. District of Columbia Board of Zoning Adjustment*, 403 A.2d 737, 1979 D.C. App. LEXIS 403 (1979).

Where not only could unnotified occupants of nearby buildings have raised new issues, but they also could have provided more facts which might have swayed board of zoning adjustment in its determination on application for special exception for construction of professional office building, and since in addition agency might have been swayed by actual number of persons objecting to application, board's failure to give notice to nearby buildings required by its own rule was not harmless error. D.C. Code § 1-1510. *Citizens Asso. of Georgetown v. District of Columbia Board of Zoning Adjustment*, 403 A.2d 737, 1979 D.C. App. LEXIS 403 (1979).

In reviewing action of District of Columbia Zoning Commission the District of Columbia Court of Appeals must consider the Commission's findings and determinations but may not substitute its own judgment so long as there is a rational basis for the Commission's opinion.

D.C. Code § 1-1510. *Capitol Hill Restoration Soc. v. Zoning Com.*, 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

Court of Appeals' function is not to determine whether particular zoning action is or is not desirable, but rather it is to determine whether there were any errors of law in proceedings, whether findings and conclusions were arbitrary, capricious or abuse of discretion, or were not supported by substantial evidence. D.C. Code §§ 1-1510, 17-305(b). *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 355 A.2d 550, 1976 D.C. App. LEXIS 489 (1976), writ of certiorari denied by 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334, 1976 U.S. LEXIS 3628 (1976).

As long as zoning commission proceedings were according to law, its decisions will carry presumption of regularity on appeal and Court of Appeals will not weigh evidence and substitute its judgment for that of commission. D.C. Code §§ 1-1510, 17-305(b). *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 355 A.2d 550, 1976 D.C. App. LEXIS 489 (1976), writ of certiorari denied by 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334, 1976 U.S. LEXIS 3628 (1976).

Absent "contested case" status under the District of Columbia Administrative Procedure Act, court did not have jurisdiction to directly review Zoning Commission's order amending zoning regulations under statute relating to review by court of administrative orders including power to hold unlawful and set aside findings and conclusions in enumerated instances, as statute does not denote a grant of jurisdiction but is a plain statement of scope of judicial review applicable only to contested cases. D.C. Code § 1-1510. *Dupont Circle Citizen's Asso. v. District of Columbia Zoning Com.*, 343 A.2d 296, 1975 D.C. App. LEXIS 433 (1975).

On review of order of board of zoning adjustment, Court of Appeals must determine whether findings made are supported and in accordance with reliable, probative and substantial evidence in the whole administrative record and whether conclusions of board flow rationally from these findings. D.C. Code §§ 1-1501 et seq., 1-1510, 5-414. *Dietrich v. District of Columbia Board of Zoning Adjustment*, 320 A.2d 282, 1974 D.C. App. LEXIS 217 (1974).

When Court of Appeals reviews zoning board's construction of regulations adopted by zoning commission, board's interpretation is controlling, unless it is plainly erroneous or inconsistent with regulation. D.C. Code §§ 1-1501 et seq., 1-1510. *Dietrich v. District of Columbia Board of Zoning Adjustment*, 320 A.2d 282, 1974 D.C. App. LEXIS 217 (1974).

On review of decision of board of zoning adjustment, Court of Appeals could not consider new issues raised by petitioners concerning parking requirements with respect to oper-

ation of private high school but would look to the exclusive record or portions of it designated by parties. D.C. Code §§ 1-1501 et seq., 1-1510. *Dietrich v. District of Columbia Board of Zoning Adjustment*, 320 A.2d 282, 1974 D.C. App. LEXIS 217 (1974).

Review by Court of Appeals of decision of board of zoning adjustment is limited to a determination of whether the decision reached follows as a matter of law from facts stated as its basis, and also whether facts so stated have any substantial support in the evidence; if board's decision follows from its findings and those findings are supported by substantial evidence, Court of Appeals must affirm even though it might have reached another result. D.C. Code § 1-1510. *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 1973 D.C. App. LEXIS 290 (1973).

— Variances or exceptions, zoning and planning.

Appropriate remedy for legally improper conditions that board of zoning adjustment (BZA) imposed on university campus plan was remand to the BZA, rather than an order to approve the plan without the conditions. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Remand was required for board of zoning adjustment (BZA) to clarify campus parking as condition of special exception and campus plan; the number could not reasonably be both a maximum and a minimum. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Property owner's decision to wait three years before filing appeal of decision denying application for certificate of occupancy to run a solid waste handling facility was unreasonable, and thus appeal was untimely; fact that owner chose to concentrate on avenues that reasonably may have appeared more promising than an appeal did not excuse its delay in noting an appeal, and owner could have taken an appeal and applied for a variance or a special exception simultaneously. *Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 2001 D.C. App. LEXIS 140 (2001).

The filing in Court of Appeals of petition for review of decision of board of adjustment regarding variance did not operate to stay the effect of board's order. D.C. Code 1981, § 1-1510(a). *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1995 D.C. App. LEXIS 96 (1995), amended by 1995 D.C. App. LEXIS 102 (D.C. May 16, 1995).

Where evidence in hearing on application for special exemption for continued operation of

parking lot in mixed use area reflected that church solely owned one other parking lot that would soon be site of new church-owned educational facility and established that once facility was completed, lot would no longer be available for parking, finding of District of Columbia Board of Zoning Adjustment that church owned other lots in immediate area which were used or were contemplated as being used for commercial parking lots was not founded on evidence and as matter of law would be deemed arbitrary and capricious. D.C. Code 1973, § 1-1510(3). *First Baptist Church v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 1981 D.C. App. LEXIS 287 (1981).

Board of zoning adjustment's notice of application for special exception for construction of professional office building and hearing on application, which notice consisted of mailing of single letter to address of each property regardless of number of persons or businesses that occupied property, fell short of notifying occupants of apartment house, although it might be adequate to notify one occupant, and thus was inadequate under board's notice rule, which states that board's legal responsibility extends to notification by mail of each occupant of property situated near subject property. D.C. Code § 1-1510. *Dupont Circle Citizens Asso. v. District of Columbia Bd. of Zoning Adjustment*, 403 A.2d 314, 1979 D.C. App. LEXIS 401 (1979).

Notice which was given with respect to time, place and nature of hearing on request for a variance from minimum lot requirement of 5,000 square feet in order to construct a single-family detached dwelling on a substandard lot and which was effected by a sign posted on lot, letters mailed to addresses within 200 feet of lot, and by newspaper publication was not defective for alleged failure to describe scheduled action as a lot width variance instead of a lot area variance. D.C. Code §§ 1-1509(a), 1-1510. *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231, 1979 D.C. App. LEXIS 381 (1979).

Where there was no extraordinary or exceptional situation or condition inherent in the property itself that could warrant the variance sought and the structure in question, though originally constructed as a flat, had been changed into a single-family dwelling and was utilized as such when zoning regulations were adopted which prohibited flats and where the property could continue to be used as a single-family residence in a manner consistent with zoning regulations, order of zoning administrator terminating nonconforming use as a flat and denying variance application was proper. D.C. Code §§ 1-1510, 5-420(3). *Silverstone v. District of Columbia Bd. of Zoning Adjustment*, 396 A.2d 992, 1979 D.C. App. LEXIS 287 (1979).

Where order of board of zoning adjustment granting rehearing following dismissal with prejudice of application for special exception to operate halfway house or social service center was invalid due to fact there were only three affirmative votes in favor of same, board's subsequent action on rehearing motion was invalid and motion had to be treated as denied, thus requiring one-year waiting period before reapplication could be made. D.C. Code § 1-1510. *Hubbard v. District of Columbia Board of Zoning Adjustment*, 366 A.2d 427, 1976 D.C. App. LEXIS 430 (1976).

Decision of board of zoning adjustment on application for special exception must not be controlled by head count as in a political election, but by evidence adduced as it relates to requirements for special exception. D.C. Code §§ 1-1501 et seq., 1-1510, 5-414. *Dietrich v. District of Columbia Board of Zoning Adjust-*

ment, 320 A.2d 282, 1974 D.C. App. LEXIS 217 (1974).

Evidence established that requirements had been met for special exception to permit private high school to be located in building situated in medium density apartment house zone. D.C. Code §§ 1-1501 et seq., 1-1510, 5-414. *Dietrich v. District of Columbia Board of Zoning Adjustment*, 320 A.2d 282, 1974 D.C. App. LEXIS 217 (1974).

Findings of Board of Zoning Adjustment in denying application for variance from a C-1 (neighborhood shopping) nonconforming use to a C-2 (community business center) use were insufficient for reviewing court to discern the necessary rational basis for the decision. D.C. Code §§ 1-1501 et seq., 5-420(3). *Salsbery v. District of Columbia Bd. of Zoning Adjustment*, 318 A.2d 894, 1974 D.C. App. LEXIS 418 (1974).

§ 2-511. Interpreters for the deaf. [Repealed].

Repealed.

(Oct. 21, 1968, 82 Stat. 1209, Pub. L. 90-614, § 12; Feb. 11, 1982, D.C. Law 4-67, § 2(b), 28 DCR 5043; Jan. 28, 1988, D.C. Law 7-62, § 14(b), 34 DCR 7426.)

Cross references. — Educational institutions, licensing, internal accreditation evaluation reports, public availability, see § 38-1310.

Insurance fraud, prevention and detection plans, public availability, see § 22-3225.09.

Police and fire departments, office of police complaints, conciliation and mediation, see § 5-1110.

Police officers, fire fighters, and teachers retirement benefit replacement plan, disclosure to the public, see § 1-909.05.

Procurement, administrative and civil remedies, civil investigative demands, see § 2-381.07.

Reinsurance intermediaries, rejections of license applications, public availability, see § 31-1802.

Prior Codifications. — 1981 Ed., § 1-1511.

Legislative history of Law 7-62. — For legislative history of D.C. Law 7-62, see Historical and Statutory Notes following § 2-510.

Subchapter II. Freedom of Information.

§ 2-531. Public policy.

The public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of this subchapter shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information.

(Oct. 21, 1968, Pub. L. 90-614, title II, § 201, as added Mar. 25, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b; Apr. 27, 2001, D.C. Law 13-283, § 3(a), 48 DCR 1917.)

Cross references. — Financial Responsibility and Management Assistance Authority, application of Freedom of Information Act to members and activities of authority, see § 47-391.08.

Restraints of trade, civil investigative demand, exemption from provisions of Freedom of Information Act, see § 28-4505.

Section references. — This section is referred to in §§ 1-309.10, 1-909.05, and 5-1110.

Prior Codifications. — 1981 Ed., § 1-1521. 1973 Ed., § 1-1521.

Effect of amendments. — D.C. Law 13-283, in the first sentence, substituted “The” for “Generally, the”.

Legislative history of Law 1-96. — Law 1-96 was introduced in Council and assigned Bill No. 1-119, which was referred to the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on September 15, 1976 and October 12, 1976, respectively. Signed by the Mayor on November 19, 1976, it was as-

signed Act No. 1-178 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-283. — For D.C. Law 13-283, see notes following § 2-502.

Delegation of Authority. — Delegation of authority under D.C. Law 1-96, the “Freedom of Information Act of 1976.”, see Mayor’s Order 91-36, March 7, 1991.

Mayor’s Orders. — Freedom of Information Act (FOIA) Committee, see Mayor’s Order 2001-30, February 27, 2001 (48 DCR 2380).

Access to Email Traffic of District Government Employees, see Mayor’s Order 2003-164, November 21, 2003 (50 DCR 10604).

Designation of Freedom of Information (FOIA) Officer in Each Subordinate Agency, Attendance at FOIA Committee Training, Listing of Subordinate Agency FOIA Officers on Agency Website and Agency Assistance with FOIA Requests, see Mayor’s Order 2004-106, June 29, 2004 (51 DCR 7138).

Editor’s notes. — Free Flow of Information Act of 1992: See §§ 16-4701 to 16-4704.

CASE NOTES

ANALYSIS

Adequacy of search.
Affidavit in support.
Construction and application.
Damages.
Deference to commission.
Ex parte communications.
Exemptions.
Federal court jurisdiction.
Judicial powers generally.
Public policy.
Records of the mayor.
Summary judgment.

Adequacy of search.

An agency need not demonstrate that all responsive documents were found in response to a complaint under the Freedom of Information Act and that no other relevant documents could possibly exist, and an agency’s failure to turn up specific documents does not undermine the determination that it conducted an adequate search for the requested documents. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 2008 D.C. App. LEXIS 254 (2008).

Affidavit in support.

A reasonably detailed affidavit setting forth the search terms and the type of search performed in response to a complaint under the Freedom of Information Act (FOIA), and averring that all files likely to contain responsive materials, if such records exist, were searched, is necessary to afford a FOIA requester an opportunity to challenge the adequacy of the search and to allow the court to determine if the

search was adequate in order to grant summary judgment in favor of the agency, and at the very least, the agency is required to explain in its affidavit that no other record system was likely to produce responsive documents. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 2008 D.C. App. LEXIS 254 (2008).

It is not enough to be entitled to summary judgment on a complaint under the Freedom of Information Act for an agency affidavit to state that a search was initiated of the Department record system most likely to contain the information which had been requested; rather, the agency affidavit in support of a motion for summary judgment must show with reasonable detail, that the search method was reasonably calculated to uncover all relevant documents, and must identify the terms searched or explain how the search was conducted. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 2008 D.C. App. LEXIS 254 (2008).

Construction and application.

There is no requirement that an agency search every record system in response to a complaint under the Freedom of Information Act, and a search is not presumed unreasonable simply because it fails to produce all relevant material. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 2008 D.C. App. LEXIS 254 (2008).

Except where the two acts differ, case law interpreting the federal Freedom of Information Act (FOIA) is treated as instructive authority with respect to the District of Columbia’s own Act. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 2008 D.C. App. LEXIS 254 (2008).

Key to interpreting Freedom of Information Act lies in providing working formula which encompasses, balances, and protects all interests, yet places emphasis on fullest responsible disclosure. D.C. Code 1981, § 1-1521 et seq. *Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 1989 D.C. App. LEXIS 115 (1989).

In sensitive area of national security information, agency under Freedom of Information Act must produce any reasonably segregable nonexempt parts of classified documents. D.C. Code 1981, §§ 1-1521 et seq., 1-1524(b). *Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 1989 D.C. App. LEXIS 115 (1989).

Records held by public officials are public, so that reference to them cannot constitute tort of intrusion on solitude or seclusion, if they are open for public inspection, subject to any relevant statutory provisions. D.C. Code 1981, § 1-1521 et seq. *Wolf v. Regardie*, 553 A.2d 1213, 1989 D.C. App. LEXIS 13 (1989).

Word "statute" as used in Freedom of Information Act exemption that shields records specifically excepted from disclosure by statute was intended to be used in its ordinary meaning and, thus, records of driver's arrest were not exempt from disclosure, despite existence of ordinance prohibiting disclosure of arrest records. D.C. Code 1981, §§ 1-1521 et seq., 1-1524(a)(6). *Newspapers, Inc. v. Metropolitan Police Dep't*, 546 A.2d 990, 1988 D.C. App. LEXIS 148 (1988).

Damages.

Punitive damages are not provided for in District of Columbia Freedom of Information Act (D.C.-FOIA). D.C. Code 1981, §§ 1-1521 to 1-1529. *Donahue v. Thomas*, 618 A.2d 601, 1992 D.C. App. LEXIS 296 (1992).

Deference to commission.

An appellate court owes no particular deference to the Public Utility Commission with respect to its interpretation of the Freedom of Information Act (FOIA), since FOIA is a statute of general applicability rather than one whose primary administration has been delegated to the Commission. Office of the People's Counsel v. PSC, 955 A.2d 169, 2008 D.C. App. LEXIS 439 (2008).

Ex parte communications.

Even if decision maker does not intend to rely on a particular ex parte communication, such communication should be made part of the record, and the parties given an opportunity to respond to it, whenever it is relevant to the facts of the case and the statutory criteria to be applied in administrative decision making. *M.B.E., Inc. v. Minority Business Opportunity*

Com., 485 A.2d 152, 1984 D.C. App. LEXIS 558 (1984).

Exemptions.

Agency may meet its burden of demonstrating that requested documents are exempt from disclosure under Freedom of Information Act (FOIA) by providing the requester with a Vaughn index, adequately describing each withheld document and explaining the exemption's relevance. *Mack v. Dep't of the Navy*, 259 F.Supp.2d 99, 2003 U.S. Dist. LEXIS 4883 (2003).

Just as provisions of Freedom of Information Act giving citizens right of access are to be generously construed, so the nine statutory exemptions must be approached with a jaundiced eye. D.C. Code 1981, § 1-1521 et seq. *Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 1989 D.C. App. LEXIS 115 (1989).

Freedom of Information Act exemptions are to be narrowly construed with ambiguities resolved in favor of disclosure. D.C. Code 1981, § 1-1521 et seq. *Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 1989 D.C. App. LEXIS 115 (1989).

Materials which agency obtained from private parties are not exempt from disclosure under Freedom of Information Act on that account. D.C. Code 1981, § 1-1521 et seq. *Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 1989 D.C. App. LEXIS 115 (1989).

Appellate courts are ill equipped to conduct their own investigation into validity of specific claims of exemption under Freedom of Information Act, and trial judge should therefore articulate precise relationship between each claim and contents of specific documents held to be exempt. D.C. Code 1981, § 1-1521 et seq. *Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 1989 D.C. App. LEXIS 115 (1989).

One who seeks to invoke Freedom of Information Act exemption must prove that it applies; burden is on agency to sustain its action. D.C. Code 1981, § 1-1521 et seq. *Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 1989 D.C. App. LEXIS 115 (1989).

Ordinance promulgated by District of Columbia Board of Commissioners was not "statute" for purposes of Freedom of Information Act exemption that shields records specifically exempted from disclosure by statute; Board did not possess authority to enact statutes. D.C. Code 1981, §§ 1-1521 et seq., 1-1524(a)(6). *Newspapers, Inc. v. Metropolitan Police Dep't*, 546 A.2d 990, 1988 D.C. App. LEXIS 148 (1988).

Federal court jurisdiction.

Court of Appeals had jurisdiction, on interlocutory appeal, over metropolitan area transit

authority's claims of immunity from requirements of District of Columbia Freedom of Information Act (DC-FOIA), which were not plainly unsubstantial. D.C. Code 1981, § 1-1521 et seq. *Kiska Constr. Corporation-U.S.A. v. Washington Metro. Area Transit Auth.*, 167 F.3d 608, 1999 U.S. App. LEXIS 2505 (C.A.D.C. 1999).

On interlocutory appeal in which metropolitan area transit authority asserted its immunity from District of Columbia Freedom of Information Act (DC-FOIA), Court of Appeals would exercise its pendent appellate jurisdiction to decide issue of whether transit authority was "agency" within meaning of DC-FOIA, given that such issue could be easily decided under District of Columbia law, while determination of immunity issue, which gave rise to appellate jurisdiction, was difficult and complicated task. D.C. Code 1981, § 1-1521 et seq. *Kiska Constr. Corporation-U.S.A. v. Washington Metro. Area Transit Auth.*, 167 F.3d 608, 1999 U.S. App. LEXIS 2505 (C.A.D.C. 1999).

Judicial powers generally.

Local Freedom of Information Act provides for full disclosure unless information requested is exempted under specific statutory provision; in absence of statutory exemption, court has no general equitable power under Freedom of Information Act to prevent disclosure of public documents and records. D.C. Code 1981, § 1-1521 et seq. *Barry v. Washington Post Co.*, 529 A.2d 319, 1987 D.C. App. LEXIS 413 (1987).

Public policy.

While there is a policy of expansion of public access, persons are not entitled to any and all information contained in public records, but only that relating to the affairs of government and official acts of officials and employees. *Wemhoff v. District of Columbia*, 887 A.2d 1004, 2005 D.C. App. LEXIS 645 (2005).

District of Columbia has a general policy favoring public access to and disclosure of its public records, but that policy is not without limitation. *Wemhoff v. District of Columbia*, 887 A.2d 1004, 2005 D.C. App. LEXIS 645 (2005).

Freedom of Information Act seeks to permit access to official information long shielded unnecessarily from public view and attempts to create judicially enforceable public right to secure official information from possibly unwilling official hands. D.C. Code 1981, § 1-1521 et seq. *Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 1989 D.C. App. LEXIS 115 (1989).

Local Freedom of Information Act embodies strong policy favoring disclosure of information

about governmental affairs and acts of public officials, a policy which requires narrow reading of any statutory exemptions from disclosure. D.C. Code 1981, § 1-1521 et seq. *Barry v. Washington Post Co.*, 529 A.2d 319, 1987 D.C. App. LEXIS 413 (1987).

Records of the mayor.

Files of Executive Office of Mayor generally are not protected from disclosure under any exemption of this chapter. *Washington Post Co. v. Barry*, 115 WLR 2249 (Super. Ct. 1987).

Documents related to the expenses of the Mayor from the discretionary and ceremonial funds are public records and are not exempt from production under D.C. Freedom of Information Act (FOIA). *Washington Post Co. v. Barry*, 115 WLR 2249 (Super. Ct. 1987).

Mayor has certain privacy interests regarding security personnel assigned to the Mayor and, in producing the records related to the expenses for the Mayor's security, appropriate steps shall be taken so as not to disclose the names, addresses, telephone numbers or other identifying information regarding security personnel which may appear in the documents produced. *Washington Post Co. v. Barry*, 115 WLR 2249 (Super. Ct. 1987).

Summary judgment.

In order to obtain summary judgment on a complaint brought under the Freedom of Information Act, the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 2008 D.C. App. LEXIS 254 (2008).

Prisoner made meritorious challenge to summary judgment entered in favor of District of Columbia Metropolitan Police Department with respect to prisoner's complaint under Freedom of Information Act in which he sought documents that would assist collateral attack to conviction for conspiracy to distribute cocaine and heroin, and thus, prisoner was entitled to relief from judgment; detective's affidavit in support of summary judgment motion did not assert that no data source other than database he searched was likely to produce responsive documents or that all files likely to contain responsive material were searched, detective did not describe search terms he used or search method, and prisoner's complaint identified at least one document that allegedly existed in police department files. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 2008 D.C. App. LEXIS 254 (2008).

§ 2-532. Right of access to public records; allowable costs; time limits.

(a) Any person has a right to inspect, and at his or her discretion, to copy any public record of a public body, except as otherwise expressly provided by § 2-534, in accordance with reasonable rules that shall be issued by a public body after notice and comment, concerning the time and place of access.

(a-1) In making any record available to a person pursuant to this section, a public body shall provide the record in any form or format requested by the person, provided that the person shall pay the costs of reproducing the record in that form or format.

(a-2) In responding to a request for records pursuant to this section, a public body shall make reasonable efforts to search for the records in electronic form or format, except when the efforts would significantly interfere with the operation of the public body's automated information system.

(a-3) A public body shall make available for inspection and copying any record produced or collected pursuant to a contract with a private contractor to perform a public function, and the public body with programmatic responsibility for the contractor shall be responsible for making such records available to the same extent as if the record were maintained by the public body.

(b) A public body may establish and collect fees not to exceed the actual cost of searching for, reviewing, and making copies of records. Documents may be furnished without charge or at a reduced charge where a public body determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(b-1) Any fee schedules adopted by the Mayor, an agency or a public body shall provide that:

(1) Fees shall be limited to reasonable standard charges for document search, duplication, and review when records are requested for commercial use;

(2) Fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or non-commercial scientific institution for scholarly or scientific research, or a representative of the news media;

(3) For any request for records not described in paragraphs (1) or (2) of this subsection, fees shall be limited to reasonable standard charges for document search and duplication; and

(4) Only the direct costs of search, duplication, or review may be recovered.

(b-2) Review costs shall include only the direct costs incurred during the initial examination of a document to determine whether the documents must be disclosed or withheld in part as exempt under this section. Review costs may not include costs incurred to determine issues of law or policy related to the request.

(b-3) No agency or public body may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency or public body has determined that the fee will exceed \$250.

(c) A public body, upon request reasonably describing any public record, shall within 15 days (except Saturdays, Sundays, and legal public holidays) of the receipt of any such request either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible and the reasons therefor.

(d) In unusual circumstances, the time limit prescribed in subsection (c) of this section may be extended by written notice to the person making such request setting forth the reasons for extension and expected date for determination. Such extension shall not exceed 10 days (except Saturdays, Sundays, and legal public holidays). For purposes of this subsection, and only to the extent necessary for processing of the particular request, "unusual circumstances" are limited to:

(1) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(2) The need for consultation, which shall be conducted with all practicable speed, with another public body having a substantial interest in the determination of the request or among 2 or more components of a public body having substantial subject-matter interest therein.

(e) Any failure on the part of a public body to comply with a request under subsection (a) of this section within the time provisions of subsections (c) and (d) of this section shall be deemed a denial of the request, and the person making such request shall be deemed to have exhausted his administrative remedies with respect to such request, unless such person chooses to petition the Mayor pursuant to § 2-537 to review the deemed denial of the request.

(f) For purposes of this section, the term:

(1) "Reasonable efforts" means that a public body shall not be required to expend more than 8 hours of personnel time to reprogram or reformat records.

(1A) "Request" means a single demand for any number of documents made at one time to an individual public body.

(2) "Search" means to review manually or by automated means, public records for the purpose of locating those records which are responsive to a request.

(Oct. 21, 1968, Pub. L. 90-614, title II, § 202, as added Mar. 25, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b; Apr. 27, 2001, D.C. Law 13-283, § 3(b), 48 DCR 1917; Mar. 16, 2005, D.C. Law 15-242, § 2, 51 DCR 11229; Mar. 17, 2005, D.C. Law 15-256, § 2(a), 52 DCR 1158; Apr. 7, 2006, D.C. Law 16-91, § 132(a), 52 DCR 10637.)

Section references. — This section is referred to in §§ 2-537, 4-1301.52, 7-2508.05, 8-151.08, 22-4017, and 47-391.08.

Prior Codifications. — 1981 Ed., § 1-1522. 1973 Ed., § 1-1522.

Effect of amendments. — D.C. Law 13-283 substituted "a public body" for "the Mayor or an agency", "Mayor or agency", or "the agency"

wherever appearing throughout the section; and added subsecs. (a-1), (a-2), (a-3), and (f).

D.C. Law 15-242, in subsec. (b), rewrote the first sentence which had read: "A public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records, but in no instance shall the total fee for searching exceed \$10 for each request." and

deleted the last sentence which had read: "Notwithstanding the foregoing, fees shall not be charged for examination and review by a public body to determine if such documents are subject to disclosure."; and added subsecs. (b-1) to (b-3).

D.C. Law 15-256, in subsec. (c), substituted "10" for "15".

D.C. Law 16-91, in subsec. (b), deleted the second sentence, which had read: "For purposes of this subsection, "request" means a single demand for any number of documents made at 1 time to an individual public body."; and added par. (f)(1A).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the Documents Administrative Cost Assessment Temporary Amendment Act of 2004 (D.C. Law 15-134, March 30, 2004, law notification 51 DCR 3820).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Documents Administrative Cost Assessment Emergency Amendment Act of 2003 (D.C. Act 15-290, January 6, 2004, 51 DCR 879).

For temporary (90 day) amendment of section, see § 2(a) of Freedom of Information Legislative Records Clarification Emergency Amendment Act of 2004 (D.C. Act 15-591, November 1, 2004, 51 DCR 10729).

For temporary (90 day) amendment of section, see § 2 of Documents Administrative Cost Assessment Emergency Amendment Act of 2004 (D.C. Act 15-592, November 1, 2004, 51 DCR 10732).

For temporary (90 day) amendment of section, see § 2 of Documents Administrative Cost Assessment Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-22, February 17, 2005, 52 DCR 2972).

For temporary (90 day) amendment of section, see § 2(a) of Freedom of Information Leg-

islative Records Clarification Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-23, February 17, 2005, 52 DCR 2973).

Legislative history of Law 1-96. — For legislative history of D.C. Law 1-96, see Historical and Statutory Notes following § 2-531.

Legislative history of Law 13-283. — For D.C. Law 13-283, see notes following § 2-502.

Legislative history of Law 15-242. — Law 15-242, the "Documents Administrative Cost Assessment Act of 2004", was introduced in Council and assigned Bill No. 15-822, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 5, 2004, and November 9, 2004, respectively. Signed by the Mayor on November 30, 2004, it was assigned Act No. 15-599 and transmitted to both Houses of Congress for its review. D.C. Law 15-242 became effective on March 16, 2005.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 2-218.54.

Legislative history of Law 15-256. — Law 15-256, the "Freedom of Information Legislative Records Clarification Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-483, which was referred to Committee on Government Operations. The Bill was adopted on first and second readings on October 5, 2004, and November 9, 2004, respectively. Signed by the Mayor on November 30, 2004, it was assigned Act No. 15-631 and transmitted to both Houses of Congress for its review. D.C. Law 15-256 became effective on March 17, 2005.

Editor's notes. — Section 3 of D.C. Law 15-256 provided: "Sec. 3. Applicability. This act shall apply with respect to any requests for records pending on the effective date of this act, whether or not the request was made prior to that date, and shall apply to any civil action pending on that date."

CASE NOTES

ANALYSIS

Adequacy of search.

Affidavit in support.

Construction with other laws.

In general.

Summary judgment.

Write-in votes.

Adequacy of search.

An agency need not demonstrate that all responsive documents were found in response to a complaint under the Freedom of Information Act and that no other relevant documents could possibly exist, and an agency's failure to turn up specific documents does not undermine the determination that it conducted an ade-

quate search for the requested documents. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 2008 D.C. App. LEXIS 254 (2008).

There is no requirement that an agency search every record system in response to a complaint under the Freedom of Information Act, and a search is not presumed unreasonable simply because it fails to produce all relevant material. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 2008 D.C. App. LEXIS 254 (2008).

Trial court ruling that Department of Finance and Revenue supplied all relevant documents in existence and complied with District of Columbia Freedom of Information Act (D.C.-FOIA) was supported by Director's testimony that Director and freedom of information officer gave all relevant information of which they

were aware up until day of trial and that some information requested by plaintiff was not available or was maintained by another government agency. D.C. Code 1981, §§ 1-1521 to 1-1529. *Donahue v. Thomas*, 618 A.2d 601, 1992 D.C. App. LEXIS 296 (1992).

Affidavit in support.

A reasonably detailed affidavit setting forth the search terms and the type of search performed in response to a complaint under the Freedom of Information Act (FOIA), and averring that all files likely to contain responsive materials, if such records exist, were searched, is necessary to afford a FOIA requester an opportunity to challenge the adequacy of the search and to allow the court to determine if the search was adequate in order to grant summary judgment in favor of the agency, and at the very least, the agency is required to explain in its affidavit that no other record system was likely to produce responsive documents. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 2008 D.C. App. LEXIS 254 (2008).

It is not enough to be entitled to summary judgment on a complaint under the Freedom of Information Act for an agency affidavit to state that a search was initiated of the Department record system most likely to contain the information which had been requested; rather, the agency affidavit in support of a motion for summary judgment must show with reasonable detail, that the search method was reasonably calculated to uncover all relevant documents, and must identify the terms searched or explain how the search was conducted. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 2008 D.C. App. LEXIS 254 (2008).

Construction with other laws.

Except where the two acts differ, case law interpreting the federal Freedom of Information Act (FOIA) is treated as instructive authority with respect to the District of Columbia's own Act. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 2008 D.C. App. LEXIS 254 (2008).

In general.

Freedom of Information Act's (FOIA) law-enforcement exemption applied to investigative report prepared by Metropolitan Police Department of the District of Columbia and obtained by Federal Bureau of Investigation (FBI) as part of background investigation of plaintiff; FBI requested permission from Department to release information, which request was denied, and plaintiff's proper recourse was to seek copy of report directly from the District of Columbia under its own Freedom of Information Act. 5 U.S.C. § 552(b)(7)(D); D.C. Code 1981, §§ 1-1522, 1-1529. *Beard v. Department of Justice*, 917 F. Supp. 61, 1996 U.S. Dist. LEXIS 2841 (1996).

Exemption subsection of Freedom of Information Act, including exemption where disclosure would be unwarranted invasion of personal privacy, may not be invoked to prevent disclosure when another subsection, which does not permit nondisclosure of information of which disclosure is authorized or mandated by other law, applies. D.C. Code §§ 1-1522(a), 1-1524(a)(2), (c). *Dunhill v. Director, Dist. of Columbia Dep't of Transp.*, 416 A.2d 244, 1980 D.C. App. LEXIS 317 (1980).

Possession and ownership indicates that Insurance Regulatory Information System reports are within the exclusive control of the D.C. Department of Consumer and Regulatory Affairs and are, therefore, "agency records" within the meaning of this section and are subject to the presumption of disclosure. *Belth v. Department of Consumer & Regulatory Affairs*, 115 WLR 2281 (Super. Ct. 1987).

Summary judgment.

In order to obtain summary judgment on a complaint brought under the Freedom of Information Act, the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 2008 D.C. App. LEXIS 254 (2008).

Prisoner made meritorious challenge to summary judgment entered in favor of District of Columbia Metropolitan Police Department with respect to prisoner's complaint under Freedom of Information Act in which he sought documents that would assist collateral attack to conviction for conspiracy to distribute cocaine and heroin, and thus, prisoner was entitled to relief from judgment; detective's affidavit in support of summary judgment motion did not assert that no data source other than database he searched was likely to produce responsive documents or that all files likely to contain responsive material were searched, detective did not describe search terms he used or search method, and prisoner's complaint identified at least one document that allegedly existed in police department files. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 2008 D.C. App. LEXIS 254 (2008).

Write-in votes.

Where write-in votes could have no possible effect on the outcome, the District of Columbia's refusal to tally and report the precise number of voters who penciled in write-in candidate as their presidential candidate of choice did not amount to disenfranchising those voters or imposing a severe burden on their speech and associational rights; any burden imposed was to some extent mitigated by the District's Freedom of Information Act, which provided that "[a]ny person has a right to inspect any public

record of a public body,” and expressly defines the term “public record” to include voting data. *Libertarian Party v. D.C. Bd. of Elections & Ethics*, 682 F.3d 72, 2012 U.S. App. LEXIS

11602 (C.A.D.C. 2012), writ of certiorari denied by 133 S. Ct. 1589, 185 L. Ed. 2d 579, 2013 U.S. LEXIS 2156, 81 U.S.L.W. 3512 (U.S. 2013).

§ 2-533. Letters of denial.

(a) Denial by a public body of a request for any public record shall contain at least the following:

(1) The specific reasons for the denial, including citations to the particular exemption(s) under § 2-534 relied on as authority for the denial;

(2) The name(s) of the public official(s) or employee(s) responsible for the decision to deny the request; and

(3) Notification to the requester of any administrative or judicial right to appeal under § 2-537.

(b) Each public body of the District of Columbia shall maintain a file of all letters of denial of requests for public records. This file shall be made available to any person on request for purposes of inspection and/or copying.

(Oct. 21, 1968, Pub. L. 90-614, title II, § 203, as added Mar. 25, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b; Apr. 27, 2001, D.C. Law 13-283, § 3(c), 48 DCR 1917.)

Section references. — This section is referred to in § 47-391.08.

Prior Codifications. — 1981 Ed., § 1-1523. 1973 Ed., § 1-1523.

Effect of amendments. — D.C. Law 13-283, in subsec. (a), substituted “a public body” for “the Mayor or an agency”; and, in subsec. (b), substituted “Each public body” for “The

Mayor and each agency of the District of Columbia”.

Legislative history of Law 1-96. — For legislative history of D.C. Law 1-96, see Historical and Statutory Notes following § 2-531.

Legislative history of Law 13-283. — For D.C. Law 13-283, see notes following § 2-502.

§ 2-534. Exemptions from disclosure.

(a) The following matters may be exempt from disclosure under the provisions of this subchapter:

(1) Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(3) Investigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would:

(A) Interfere with:

(i) Enforcement proceedings;

(ii) Council investigations; or

(iii) Office of Police Complaints ongoing investigations;

(B) Deprive a person of a right to a fair trial or an impartial adjudication;

(C) Constitute an unwarranted invasion of personal privacy;

(D) Disclose the identity of a confidential source and, in the case of a record compiled by a law-enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(E) Disclose investigative techniques and procedures not generally known outside the government; or

(F) Endanger the life or physical safety of law-enforcement personnel;

(4) Inter-agency or intra-agency memorandums or letters, including memorandums or letters generated or received by the staff or members of the Council, which would not be available by law to a party other than a public body in litigation with the public body.

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon;

(6) Information specifically exempted from disclosure by statute (other than this section), provided that such statute:

(A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(7) Information specifically authorized by federal law under criteria established by a presidential executive order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to such executive order;

(8) Information exempted from disclosure by § 28-4505;

(9) Information disclosed pursuant to § 5-417;

(10) Any specific response plan, including any District of Columbia response plan, as that term is defined in § 7-2301(1), and any specific vulnerability assessment, either of which is intended to prevent or to mitigate an act of terrorism, as that term is defined in § 22-3152(1);

(11) Information exempt from disclosure by § 47-2851.06;

(12) Information, the disclosure of which would reveal the name of an employee providing information under subchapter XV-A of Chapter 6 of Title 1 [§ 1-615.51 et seq.] and subchapter XII of Chapter 2 of this title [2-233.01 et seq.], unless the name of the employee is already known to the public;

(13) Information exempt from disclosure by § 7-2271.04; and

(14) Information that is ordered sealed and restricted from public access pursuant to Chapter 8 of Title 16.

(a-1)(1) The Council may assert, on behalf of any public body from which it obtains records or information, any exemption listed in subsection (a) of this section that could be asserted by the public body pertaining to the records or information.

(2) Disclosure of any public record, document, or information from a District of Columbia government agency, official, or employee to the following persons or entities shall not constitute a waiver of any privilege or exemption

that otherwise could be asserted by the District of Columbia to prevent disclosure to the general public or in a judicial or administrative proceeding:

- (A) The Council;
- (B) A Council committee;
- (C) A member of the Council acting in an official capacity;
- (D) The District of Columbia Auditor; or
- (E) An employee of the Office of the District of Columbia Auditor.

(b) Any reasonably segregable portion of a public record shall be provided to any person requesting the record after deletion of those portions which may be withheld from disclosure pursuant to subsection (a) of this section. In each case, the justification for the deletion shall be explained fully in writing, and the extent of the deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (a) of this section under which the deletion is made. If technically feasible, the extent of the deletion and the specific exemptions shall be indicated at the place in the record where the deletion was made.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from the Council of the District of Columbia. This section shall not operate to permit nondisclosure of information of which disclosure is authorized or mandated by other law.

(d) The provisions of this subchapter shall not apply to the Vital Records Act of 1981.

(e) All exemptions available under this section shall apply to the Council as well as agencies of the District government. The deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege are incorporated under the inter-agency memoranda exemption listed in subsection (a)(4) of this section, and these privileges, among other privileges that may be found by the court, shall extend to any public body that is subject to this subchapter.

(Oct. 21, 1968, Pub. L. 90-614, title II, § 204, as added Mar. 25, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b; Mar. 5, 1981, D.C. Law 3-169, § 3(c), 27 DCR 5368; Oct. 8, 1981, D.C. Law 4-34, § 29(i), 28 DCR 3271; June 19, 1982, D.C. Law 4-119, § 2(f), 29 DCR 1952; Apr. 27, 2001, D.C. Law 13-283, § 3(d), 48 DCR 1917; Oct. 17, 2002, D.C. Law 14-194, § 302, 49 DCR 5306; Oct. 28, 2003, D.C. Law 15-38, § 3(b), 50 DCR 6913; Mar. 17, 2005, D.C. Law 15-256, § 2(b), 52 DCR 1158; Apr. 13, 2005, D.C. Law 15-354, § 83(a), 52 DCR 2638; Apr. 7, 2006, D.C. Law 16-91, § 132(b), 52 DCR 10637; Sept. 19, 2006, D.C. Law 16-152, § 2, 53 DCR 5371; Mar. 14, 2007, D.C. Law 16-262, § 231, 54 DCR 794; May 5, 2007, D.C. Law 16-307, § 3(a), 54 DCR 868; June 13, 2008, D.C. Law 17-176, § 5, 55 DCR 5390; Mar. 25, 2009, D.C. Law 17-353, § 174, 56 DCR 1117; Mar. 11, 2010, D.C. Law 18-119, § 3, 57 DCR 906.)

Cross references. — Environmental controls, wastewater control, confidential or privileged information, exemption from disclosure, grounds for exemption, see § 8-105.09.

Hazardous waste management, confidential or privileged information, exemption from disclosure, grounds for exemption, see § 8-1321.

Section references. — This section is re-

ferred to in §§ 1-301.89a, 1-309.13, 2-532, 2-533, 2-537, 8-634.03, and 47-391.08.

Prior Codifications. — 1981 Ed., § 1-1524. 1973 Ed., § 1-1524.

Effect of amendments. — D.C. Law 13-283 rewrote subsec. (b) which prior thereto read:

“(b) Any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (a) of this section.”

D.C. Law 14-194 made nonsubstantive changes to subsecs. (a)(8) and (a)(9); and added subsec. (a)(10).

D.C. Law 15-38, in subsec. (a), made nonsubstantive changes to pars. (9) and (10), and added par. (11).

D.C. Law 15-256, in par. (3) of subsec. (a), rewrote the lead-in language which had read: “(3) Investigatory records compiled for law-enforcement purposes, but only to the extent that the production of such records would:” and rewrote subpar. (A) which had read: “(A) Interfere with enforcement proceedings;”; rewrote par. (4) of subsec. (a); and added par. (12) of subsec. (a) and subsecs. (a-1) and (e). Prior to amendment, par. (4) of subsec. (a) read:

“(4) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;”

D.C. Law 15-354, in subsec. (a), validated a previously made technical correction.

D.C. Law 16-91, in pars. (a)(10) and (11), validated previously made technical changes; and, in subsec. (e), substituted “this subchapter” for “this chapter”.

D.C. Law 16-152, in subsec. (a)(3), substituted “investigations and investigations conducted by the Office of Police Complaints” for “investigations” in the lead-in language, rewrote subpar. (A), and inserted “or” at the end of subpar. (E); and, in subsec. (e), deleted “executive branch” preceding “agencies”. Prior to amendment, subpar. (A) of subsec. (a)(3) read as follows: “(A) Interfere with enforcement proceedings, or with Council investigations;”

D.C. Law 16-262 added subsec. (a)(13).

D.C. Law 16-307 added subsec. (a)(14).

D.C. Law 17-176, in subsec. (a-1), designated the existing text as par. (1) and added par. (2).

D.C. Law 17-353 validated previously made technical corrections in subsecs. (a)(12), (13).

D.C. Law 18-119 rewrote subsec. (a-1)(2), which read as follows: “(2) Disclosure of documents from a District of Columbia government agency, official, or employee to the Council, including an employee of the Office of the District of Columbia Auditor, a Council committee, or a member of the Council acting in an official capacity, shall not constitute a waiver of any privilege that otherwise could be asserted by the District of Columbia to prevent disclosure

of the documents in a judicial or administrative proceeding.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of the Master Business Registration Delay Temporary Act of 2003 (D.C. Law 14-302, May 3, 2003, law notification 50 DCR 3776).

For temporary (225 day) amendment of section, see § 2(a) of the Freedom of Information Legislative Records Clarification Temporary Amendment Act of 2003 (D.C. Law 15-83, March 10, 2004, law notification 51 DCR 3375).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3 of Master Business Registration Delay Emergency Act of 2002 (D.C. Act 14-595, January 7, 2003, 50 DCR 647).

For temporary (90 day) amendment of section, see § 3 of Master Business Registration Delay Congressional Review Emergency Act of 2003 (D.C. Act 15-73, April 16, 2003, 50 DCR 3616).

For temporary (90 day) amendment of section, see § 3 of Master Business Registration Second Delay Emergency Act of 2003 (D.C. Act 15-83, May 19, 2003, 50 DCR 4100).

For temporary (90 day) amendment of section, see § 3(b) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

For temporary (90 day) amendment of section, see §§ 2(a) and 3 of Freedom of Information Legislative Records Clarification Emergency Amendment Act of 2003 (D.C. Act 15-190, October 24, 2003, 50 DCR 9499).

For temporary (90 day) amendment of section, see § 2(a) of Freedom of Information Legislative Records Clarification Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-372, February 19, 2004, 51 DCR 2611).

For temporary (90 day) amendment of section, see § 2(b) of Freedom of Information Legislative Records Clarification Emergency Amendment Act of 2004 (D.C. Act 15-591, November 1, 2004, 51 DCR 10729).

For temporary (90 day) amendment of section, see § 2(b) of Freedom of Information Legislative Records Clarification Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-23, February 17, 2005, 52 DCR 2975).

For temporary (90 day) amendment of section, see § 2 of Office of Police Complaints Emergency Act of 2006 (D.C. Act 16-379, May 19, 2006, 53 DCR 4403).

For temporary (90 day) amendment of section, see § 2 of Office of Police Complaints Congressional Review Emergency Act of 2006 (D.C. Act 16-524, November 7, 2006, 53 DCR 9273).

Legislative history of Law 1-96. — For legislative history of D.C. Law 1-96, see Historical and Statutory Notes following § 2-531.

Legislative history of Law 3-169. — Law 3-169 was introduced in Council and assigned Bill No. 3-107, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 28, 1980 and November 12, 1980, respectively. Signed by the Mayor on November 25, 1980, it was assigned Act No. 3-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-34. — Law 4-34 was introduced in Council and assigned Bill No. 4-161, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-58 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-119. — Law 4-119 was introduced in Council and assigned Bill No. 4-135, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 23, 1982, and April 6, 1982, respectively. Signed by the Mayor on May 4, 1982, it was assigned Act No. 4-182 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-283. — For D.C. Law 13-283, see notes following § 2-502.

Legislative history of Law 14-194. — Law 14-194, the "Omnibus Anti-Terrorism Act of 2002", was introduced in Council and assigned Bill No. 14-373, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 9, 2002, and May 7, 2002, respectively. Signed by the Mayor on June 3, 2002, it was assigned Act No. 14-380 and transmitted to both Houses of Congress for its review. D.C. Law 14-194 became effective on October 17, 2002.

Legislative history of Law 15-38. — Law 15-38, the "Streamlining Regulation Act of 2003", was introduced in Council and assigned Bill No. 15-19, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on August 11, 2003, it was assigned Act No. 15-146 and transmitted to both Houses of Congress for its review. D.C. Law 15-38 became effective on October 28, 2003.

Legislative history of Law 15-256. — For Law 15-256, see notes following § 2-532.

Legislative history of Law 15-354. — Law 15-354, the "Technical Amendments Act of 2004", was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to

both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 2-218.54.

Legislative history of Law 16-152. — Law 16-152, the "Office of Police Complaints Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-587 which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 2, 2006, and June 6, 2006, respectively. Signed by the Mayor on June 26, 2006, it was assigned Act No. 16-393 and transmitted to both Houses of Congress for its review. D.C. Law 16-152 became effective on September 19, 2006.

Legislative history of Law 16-262. — Law 16-262, the "Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-242, which was referred to Committee on Judiciary. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-618 and transmitted to both Houses of Congress for its review. D.C. Law 16-262 became effective on March 14, 2007.

Legislative history of Law 16-307. — Law 16-307, the "Criminal Record Sealing Act of 2006", was introduced in Council and assigned Bill No. 16-746, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-631 and transmitted to both Houses of Congress for its review. D.C. Law 16-307 became effective on May 5, 2007.

Legislative history of Law 17-176. — Law 17-176, the "Compliance Unit Establishment Act of 2008", was introduced in Council and assigned Bill No. 17-503 which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on March 4, 2008, and April 1, 2008, respectively. Signed by the Mayor on April 22, 2008, it was assigned Act No. 17-360 and transmitted to both Houses of Congress for its review. D.C. Law 17-176 became effective on June 13, 2008.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 2-218.42.

Legislative history of Law 18-119. — Law 18-119, the "Disclosure of Information to the Council Amendment Act of 2009", was introduced in Council and assigned Bill No. 18-491, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on December 1, 2009, and December 15, 2009, respectively. Approved without signature by the Mayor on January 14, 2010, it was assigned Act No. 18-267 and transmitted to both Houses of Congress for its review. D.C.

Law 18-119 became effective on March 11, 2010.

References in text. — The “Vital Records Act of 1981”, referred to in subsection (d), is D.C. Law 4-34.

Editor’s notes. — Section 3 of D.C. Law

15-256 provided: “Sec. 3. Applicability. This act shall apply with respect to any requests for records pending on the effective date of this act, whether or not the request was made prior to that date, and shall apply to any civil action pending on that date.”

CASE NOTES

ANALYSIS

Commercial information.
Exemption by statute.
Identification of confidential source.
Inter-agency or intra-agency memoranda.
Invasions of personal privacy.
Investigatory records.
Segregable portions of public records.
Trade secrets.

Commercial information.

Absent properly authorized, reasonable, published criteria for restricting access to information concerning holders of valid drivers permits which was authorized for release by law, Department of Transportation’s ad hoc refusal of businessman’s request for such information, based on his intended use of such information for commercial purposes, was beyond scope of Department’s authority. D.C. Code §§ 1-1524(a)(2), (c), 40-421, 40-603(b). *Dunhill v. Director, Dist. of Columbia Dep’t of Transp.*, 416 A.2d 244, 1980 D.C. App. LEXIS 317 (1980).

Voluntary, nonprofit organization can suffer no competitive injury or economic harm and therefore may not claim protection from disclosure under subsection (a)(1). *Belth v. Department of Consumer & Regulatory Affairs*, 115 WLR 2281 (Super. Ct. 1987).

Exemption by statute.

Agency may meet its burden of demonstrating that requested documents are exempt from disclosure under Freedom of Information Act (FOIA) by providing the requester with a Vaughn index, adequately describing each withheld document and explaining the exemption’s relevance. *Mack v. Dep’t of the Navy*, 259 F.Supp.2d 99, 2003 U.S. Dist. LEXIS 4883 (2003).

To properly claim exemption from mandatory disclosure, under Freedom of Information Act (FOIA), for records related solely to the internal personnel rules and practices of an agency, the agency must show that the material withheld falls within the terms of the statutory language, if it does, the agency must then show that disclosure may significantly risk circumvention of agency regulations or statutes, or that the material relates to trivial administrative matters of no genuine public interest.

Maydak v. United States DOJ, 254 F.Supp.2d 23, 2003 U.S. Dist. LEXIS 5170 (2003).

Rule of criminal procedure prohibiting disclosure of matters occurring before a grand jury qualifies as a “statute,” for purposes of Freedom of Information Act (FOIA) exemption for records that are specifically exempted from disclosure by statute, because it was affirmatively enacted by Congress. *Maydak v. United States DOJ*, 254 F.Supp.2d 23, 2003 U.S. Dist. LEXIS 5170 (2003).

To prevail under Freedom of Information Act (FOIA) exemption for trade secrets and commercial or financial information obtained from a person and privileged or confidential, an agency must show that the information is: (1) commercial or financial; (2) obtained from a person or corporation; and (3) privileged or confidential. *Maydak v. United States DOJ*, 254 F.Supp.2d 23, 2003 U.S. Dist. LEXIS 5170 (2003).

Freedom of Information Act (FOIA) did not require alleged proprietary local revenue data, collected from public utilities by Public Utility Commission, to be published in Commission’s notice of reimbursement fees to be paid by the utilities, since documents alleged to contain proprietary information were required to be deemed excepted from disclosure under FOIA until a challenge was resolved as to the information’s proprietary nature; requiring publication of the revenue data in notice of reimbursement fees was not the only way to determine if the Commission correctly applied the statutory reimbursement formula. *Office of the People’s Counsel v. PSC*, 955 A.2d 169, 2008 D.C. App. LEXIS 439 (2008).

The right of public access to public records is limited by statutory exceptions which, consistent with the general public policy of access, must be read narrowly. *Wemhoff v. District of Columbia*, 887 A.2d 1004, 2005 D.C. App. LEXIS 645 (2005).

Ordinance promulgated by District of Columbia Board of Commissioners was not “statute” for purposes of Freedom of Information Act exemption that shields records specifically exempted from disclosure by statute; Board did not possess authority to enact statutes. D.C. Code 1981, §§ 1-1521 et seq., 1-1524(a)(6). *Newspapers, Inc. v. Metropolitan Police Dep’t*, 546 A.2d 990, 1988 D.C. App. LEXIS 148 (1988).

Word “statute” as used in Freedom of Information Act exemption that shields records specifically excepted from disclosure by statute was intended to be used in its ordinary meaning and, thus, records of driver’s arrest were not exempt from disclosure, despite existence of ordinance prohibiting disclosure of arrest records. D.C. Code 1981, §§ 1-1521 et seq., 1-1524(a)(6). *Newspapers, Inc. v. Metropolitan Police Dep’t*, 546 A.2d 990, 1988 D.C. App. LEXIS 148 (1988).

Documents relating to mayor’s expenses from discretionary and ceremonial funds requested by newspaper pursuant to local Freedom of Information Act were not specifically exempted from disclosure by statute authorizing expenditure of discretionary and ceremonial funds, and hence were not within Freedom of Information Act exemption providing for exemption from disclosure if information is exempted by other statutes. D.C. Code 1981, §§ 1-355, 1-356, 1-1524(a)(6). *Barry v. Washington Post Co.*, 529 A.2d 319, 1987 D.C. App. LEXIS 413 (1987).

Identification of confidential source.

Fact questions regarding whether police department disclosed confidential information to others barred summary judgment against plaintiff in his action to obtain information pursuant to District of Columbia Freedom of Information Act (DC-FOIA) concerning names of witnesses who attended police lineup as well as results of lineup. D.C. Code 1981, § 1-1524(a)(3)(D). *Anderson v. Thomas*, 683 A.2d 156, 1996 D.C. App. LEXIS 207 (1996).

Inter-agency or intra-agency memoranda.

To qualify for exemption from mandatory disclosure, under Freedom of Information Act (FOIA), for records related solely to the internal personnel rules and practices of an agency, the document must not only be internal, but must also relate to an existing agency rule or practice. *Maydak v. United States DOJ*, 254 F.Supp.2d 23, 2003 U.S. Dist. LEXIS 5170 (2003).

Freedom of Information Act (FOIA) exemption, protecting from disclosure inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency, exempts those documents, and only those documents, normally privileged in the civil discovery context; as such, exemption encompasses deliberative process privilege, the attorney-client privilege, and the attorney work product privilege. *Maydak v. United States DOJ*, 254 F.Supp.2d 23, 2003 U.S. Dist. LEXIS 5170 (2003).

An agency possessing records that originated with another agency is ultimately responsible for processing the records and therefore cannot simply refuse to act on the ground that the

documents originated elsewhere; the agency nonetheless may refer the records to the originating agency for consultation as to whether certain Freedom of Information Act (FOIA) exemptions apply. *Maydak v. United States DOJ*, 254 F.Supp.2d 23, 2003 U.S. Dist. LEXIS 5170 (2003).

At the very least, an agency is required to explain in its Freedom of Information Act (FOIA) affidavit that no other record system was likely to produce responsive records. *Maydak v. United States DOJ*, 254 F.Supp.2d 23, 2003 U.S. Dist. LEXIS 5170 (2003).

Independently initiated, prepared and funded reports of a private organization which are not generated, initiated, solicited, contracted for, paid for, or supervised by a government agency or whose ultimate contents are not controlled by such agency, but which are used by such agency as the basis for important public policy decisions are not “inter-agency” or “intra-agency” memorandums immunized from disclosure under subsection (a)(4). *Belth v. Department of Consumer & Regulatory Affairs*, 115 WLR 2281 (Super. Ct. 1987).

Invasions of personal privacy.

All information that applies to a particular individual qualifies for consideration under the Freedom of Information Act (FOIA) exemption for information about individuals contained in personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. *Maydak v. United States DOJ*, 254 F.Supp.2d 23, 2003 U.S. Dist. LEXIS 5170 (2003).

Requested information is not protected by Freedom of Information Act (FOIA) exemption for information about individuals contained in personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, if the requester establishes an overriding public interest in disclosure by showing that the information is necessary to shed any light on the unlawful conduct of any government agency or official. *Maydak v. United States DOJ*, 254 F.Supp.2d 23, 2003 U.S. Dist. LEXIS 5170 (2003).

Bureau of Prisons (BOP) failed to establish that requested information by inmate came under Freedom of Information Act (FOIA) exemption for information about individuals contained in personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. *Maydak v. United States DOJ*, 254 F.Supp.2d 23, 2003 U.S. Dist. LEXIS 5170 (2003).

Trial court, in proceeding in which editor of newspaper sought specified information about disability care-related facilities for the men-

tally disabled, was required on remand to consider whether Department on Disability Services (DDS) had sustained its statutory burden to defend withholding of addresses and contact information of disability care facilities in certain ward under personal privacy exemption of Freedom of Information Act's (FOIA). *Padou v. District of Columbia*, 29 A.3d 973, 2011 D.C. App. LEXIS 607 (2011).

Addresses of mental health-related community residential facilities (MHCRFs) in certain ward were within personal privacy exemption of Freedom of Information Act's (FOIA); street address of MHCRF constituted identification data since characteristic revealed by virtue of being at that particular address was mental illness, and substantial privacy interest of mentally ill, who resided in MHCRFs in ward, in protecting themselves from continuing stigma of mental illness outweighed public interest in disclosure of MHCRF addresses. *Padou v. District of Columbia*, 29 A.3d 973, 2011 D.C. App. LEXIS 607 (2011).

If a District of Columbia employee discloses personal information in the motor vehicle records for the purpose of allowing solicitation of clients by a private attorney, that employee arguably would be vulnerable to a lawsuit, as would be the private attorney if he used the personal information to find clients for a class action lawsuit. *Wemhoff v. District of Columbia*, 887 A.2d 1004, 2005 D.C. App. LEXIS 645 (2005).

Presentence reports, mental health assessments, records on inmates' institutional adjustment and progress, and academic records which related to inmates' applications for reduction of minimum sentences were exempt from disclosure to inmate under Freedom of Information Act provision governing information of personal nature where public disclosure would constitute unwarranted invasion of personal privacy. D.C. Code 1981, § 1-1524(a)(2). *Hines v. District of Columbia Bd. of Parole*, 567 A.2d 909, 1989 D.C. App. LEXIS 263 (1989).

Personal privacy exemption in Freedom of Information Act could not be invoked by Department of Transportation to prevent disclosure of list of holders of valid drivers permits to businessman seeking to use such information for commercial purposes, since disclosure of such information was authorized under Department of Transportation regulations. D.C. Code §§ 1-1524(a)(2), (c), 40-421, 40-603(b). *Dunhill v. Director, Dist. of Columbia Dep't of Transp.*, 416 A.2d 244, 1980 D.C. App. LEXIS 317 (1980).

Exemption subsection of Freedom of Information Act, including exemption where disclosure would be unwarranted invasion of personal privacy, may not be invoked to prevent disclosure when another subsection, which does not permit nondisclosure of information of

which disclosure is authorized or mandated by other law, applies. D.C. Code §§ 1-1522(a), 1-1524(a)(2), (c). *Dunhill v. Director, Dist. of Columbia Dep't of Transp.*, 416 A.2d 244, 1980 D.C. App. LEXIS 317 (1980).

Investigatory records.

Attorney who requested records under the Freedom of Information Act concerning the identity and addresses of motorists who received traffic violation citations as a result of being photographed by a "red light camera" at a particular intersection could not gain access to such information by relying on the "investigation in anticipation of litigation" exception of the Driver's Privacy Protection Act (DPPA), where attorney wanted to solicit motorists to bring a class action lawsuit against District; DPPA prohibited such disclosure and use. *Wemhoff v. District of Columbia*, 887 A.2d 1004, 2005 D.C. App. LEXIS 645 (2005).

Attorney who requested records under the Freedom of Information Act concerning the identity and addresses of motorists who received traffic violation citations as a result of being photographed by a "red light camera" at a particular intersection could not gain access to such information by relying on provision of the Motor Vehicle Safety Responsibility Act (MVSRA) which authorized disclosure of driver operating records, where attorney wanted to solicit motorists to bring a class action lawsuit against District; solicitation of motorists and use of driver operating records for matters unrelated to accidents fell outside the intent of Congress in enacting the MVSRA. *Wemhoff v. District of Columbia*, 887 A.2d 1004, 2005 D.C. App. LEXIS 645 (2005).

Documents reflecting day-to-day expenditures for security relating to mayor requested by newspaper pursuant to local Freedom of Information Act, were not exempt from production as "investigatory records compiled for law enforcement purposes" inasmuch as records were not compiled in course of an investigation for any specific law enforcement purpose. D.C. Code 1981, § 1-1524(a)(3). *Barry v. Washington Post Co.*, 529 A.2d 319, 1987 D.C. App. LEXIS 413 (1987).

Exemption from disclosure under Freedom of Information Act for "investigatory records compiled for law enforcement purposes" refers only to records prepared or assembled in course of investigations which focus directly on specifically alleged illegal acts, illegal acts of particular identified persons, or acts which could, if proved, result in civil or criminal sanctions. D.C. Code 1981, § 1-1524(a)(3). *Barry v. Washington Post Co.*, 529 A.2d 319, 1987 D.C. App. LEXIS 413 (1987).

Subsection (a)(3) is designed to protect a governmental interest and applies only to documents which have been compiled for investi-

gation of specific, suspected violations of law, and not to documents generated in the routine administration, surveillance or oversight of governmental programs. *Belth v. Department of Consumer & Regulatory Affairs*, 115 WLR 2281 (Super. Ct. 1987).

Segregable portions of public records.

When responsive documents are withheld in their entirety, the court has an affirmative duty to consider whether non-exempt information could have been segregated from exempt information and released under the Freedom of Information Act (FOIA). *Maydak v. United States DOJ*, 254 F.Supp.2d 23, 2003 U.S. Dist. LEXIS 5170 (2003).

Inmate viewing records under Freedom of Information Act could not simply ask for mass of documents, many of which were incontrovertibly exempt from production, and demand that trial judge go through each document to determine if there was some part of it which could be disclosed; duty of agency to identify reasonably segregable portions of records and obligation of trial judge to conduct in camera inspection presupposed request more focused than "give me all you have and, if you must, redact the names." D.C. Code 1981, § 1-1524(b). *Hines v. District of Columbia Bd. of Parole*, 567 A.2d 909, 1989 D.C. App. LEXIS 263 (1989).

In sensitive area of national security information, agency under Freedom of Information Act must produce any reasonably segregable nonexempt parts of classified documents. D.C. Code 1981, §§ 1-1521 et seq., 1-1524(b). *Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 1989 D.C. App. LEXIS 115 (1989).

Failure of trial judge in Freedom of Information Act case to make specific determinations as to whether exempt portion of any document could reasonably be segregated from remainder for release necessitated remand. D.C. Code 1981, §§ 1-1521 et seq., 1-1524(b). *Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 1989 D.C. App. LEXIS 115 (1989).

Trade secrets.

Party seeking to invoke Freedom of Information Act exemption for trade secrets and confidential commercial or financial information must show that party from whom information was obtained faces actual competition and that disclosure will cause substantial competitive injury. D.C. Code 1981, § 1-1524(a)(1); 5 U.S.C. § 552(b)(4). *Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 1989 D.C. App. LEXIS 115 (1989).

§ 2-535. Recording of final votes.

Each agency having more than 1 member shall maintain and make available for public inspection a record of the final votes of each member in each proceeding of that agency.

(Oct. 21, 1968, Pub. L. 90-614, title II, § 205, as added Mar. 25, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

Section references. — This section is referred to in § 47-391.08.

Prior Codifications. — 1981 Ed., § 1-1525. 1973 Ed., § 1-1525.

Legislative history of Law 1-96. — For legislative history of D.C. Law 1-96, see Historical and Statutory Notes following § 2-531.

§ 2-536. Information which must be made public.

(a) Without limiting the meaning of other sections of this subchapter, the following categories of information are specifically made public information, and do not require a written request for information:

(1) The names, salaries, title, and dates of employment of all employees and officers of a public body;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(4) Those statements of policy and interpretations of policy, acts, and rules which have been adopted by a public body;

(5) Correspondence and materials referred to therein, by and with a public body, relating to any regulatory, supervisory, or enforcement responsibilities of the public body, whereby the public body determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;

(6) Information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;

(6A) Budget requests, submissions, and reports available electronically that agencies, boards, and commissions transmit to the Office of the Budget and Planning during the budget development process, as well as reports on budget implementation and execution prepared by the Office of the Chief Financial Officer, including baseline budget submissions and appeals, financial status reports, and strategic plans and performance-based budget submissions;

(7) The minutes of all proceedings of all public bodies;

(8) All names and mailing addresses of absentee real property owners and their agents;

(8A) All pending applications for building permits and authorized building permits, including the permit file;

(9) Copies of all records, regardless of form or format, which have been released to any person under this chapter and which, because of the nature of their subject matter, the public body determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(10) A general index of the records referred to in this subsection, unless the materials are promptly published and copies offered for sale.

(b) For records created on or after November 1, 2001, each public body shall make records available on the Internet or, if a website has not been established by the public body, by other electronic means. This subsection is intended to apply only to information that must be made public pursuant to this subsection.

(c) For the purposes of this section “absentee real property owners” means owners of real property located in the District that do not reside at the real property.

(Oct. 21, 1968, Pub. L. 90-614, title II, § 206, as added Mar. 25, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b; Mar. 17, 1993, D.C. Law 9-241, § 9, 40 DCR 629; Apr. 27, 2001, D.C. Law 13-283, § 3(e), 48 DCR 1917; Dec. 7, 2004, D.C. Law 15-205, § 1222, 51 DCR 8441; Apr. 13, 2005, D.C. Law 15-354, § 7, 52 DCR 2638; Apr. 7, 2006, D.C. Law 16-91, § 133, 52 DCR 10637.)

Section references. — This section is referred to in §§ 8-151.08 and 47-391.08.

Prior Codifications. — 1981 Ed., § 1-1526. 1973 Ed., § 1-1526.

Effect of amendments. — D.C. Law 13-283 rewrote the section which prior thereto read:

“Without limiting the meaning of other sections of this subchapter, the following categories of records shall be made available to the public:

ries of information are specifically made public information:

“(1) The names, salaries, title, and dates of employment of all employees and officers of the Mayor and an agency;

“(2) Administrative staff manuals and instructions to staff that affect a member of the public;

“(3) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

“(4) Those statements of policy and interpretations of policy, acts, and rules which have been adopted by the Mayor or an agency;

“(5) Correspondence and materials referred to therein, by and with the Mayor or an agency, relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;

“(6) Information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;

“(7) The minutes of all proceedings of all agencies; and

“(8) All names and mailing addresses of absentee real property owners and their agents. ‘Absentee real property owners’ means owners of real property located in the District that do not reside at the real property.”

D.C. Law 15-205 added pars. (6A) and (8A) to subsec. (a).

D.C. Law 15-534, in subsec. (a), validated a previously made technical correction.

D.C. Law 16-91, in par. (6A) of subsec. (a), validated a previously made technical correction.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1222 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1222 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 1-96. — For legislative history of D.C. Law 1-96, see Historical and Statutory Notes following § 2-531.

Legislative history of Law 9-241. — Law 9-241, the “Real Property Tax Assessment Appeal Process Revision Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-199, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 5, 1993, it was assigned Act No. 9-375 and transmitted to both Houses of Congress for its review. D.C. Law 9-241 became effective on March 17, 1993.

Legislative history of Law 13-283. — For D.C. Law 13-283, see notes following § 2-502.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 2-301.07.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 2-301.05b

Legislative history of Law 15-354. — For Law 15-354, see notes following § 2-534.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 2-218.54.

Short title. — Short title of subtitle U of title I of Law 15-205: Section 1221 of D.C. Law 15-205 provided that subtitle U of title I of the act may be cited as Freedom of Information Amendment Act of 2004.

CASE NOTES

Exemptions.

Freedom of Information Act (FOIA) did not require alleged proprietary local revenue data, collected from public utilities by Public Utility Commission, to be published in Commission’s notice of reimbursement fees to be paid by the utilities, since documents alleged to contain proprietary information were required to be deemed excepted from disclosure under FOIA

until a challenge was resolved as to the information’s proprietary nature; requiring publication of the revenue data in notice of reimbursement fees was not the only way to determine if the Commission correctly applied the statutory reimbursement formula. *Office of the People’s Counsel v. PSC*, 955 A.2d 169, 2008 D.C. App. LEXIS 439 (2008).

§ 2-537. Administrative appeals.

(a) Except as provided in subsection (a-1) of this section, any person denied the right to inspect a public record of a public body may petition the Mayor to review the public record to determine whether it may be withheld from public inspection. Such determination shall be made in writing with a statement of

reasons therefor in writing within 10 days (excluding Saturdays, Sundays, and legal holidays) of the submission of the petition.

(1) If the Mayor denies the petition or does not make a determination within the time limits provided in this subsection, or if a person is deemed to have exhausted his or her administrative remedies pursuant to subsection (e) of § 2-532, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.

(2) If the Mayor decides that the public record may not be withheld, he shall order the public body to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may bring suit in the Superior Court for the District of Columbia to enjoin the public body from withholding the record and to compel the production of the requested record.

(a-1) Any person denied the right to inspect a public record in the possession of the Council may institute proceedings in the Superior Court for the District of Columbia for injunctive or declaratory relief, or for an order to enjoin the public body from withholding the record and to compel the production of the requested record.

(b) In any suit filed under subsection (a) or (a-1) of this section, the Superior Court for the District of Columbia may enjoin the public body from withholding records and order the production of any records improperly withheld from the person seeking disclosure. The burden is on the public agency to sustain its action. In such cases the court shall determine the matter de novo, and may examine the contents of such records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in § 2-534.

(c) If a person seeking the right to inspect or to receive a copy of a public record prevails in whole or in part in such suit, he or she may be awarded reasonable attorney fees and other costs of litigation.

(d) Any person who commits an arbitrary or capricious violation of the provisions of this subchapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$100.00. A prosecution under this section may only be commenced by the issuance of a citation, which shall be personally served upon the defendant. The defendant shall not be arrested prior to the time of trial, except that a defendant who fails to appear for arraignment or trial may be arrested pursuant to a bench warrant and required to post a bond to secure his or her future appearance.

(e) All employees of the District government are responsible for compliance with the provisions of this subchapter, and this requirement shall be incorporated in section 1803 of Title 6 of the District of Columbia Municipal Regulations.

(Oct. 21, 1968, Pub. L. 90-614, title II, § 207, as added Mar. 25, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b; Apr. 27, 2001, D.C. Law 13-283, § 3(f), 48 DCR 1917; Oct. 26, 2001, D.C. Law 14-42, § 3(a), 48 DCR 7612; Mar. 13, 2004, D.C. Law 15-105, § 26(a), 51 DCR 881; Mar. 17, 2005, D.C. Law 15-256, § 2(c), 52 DCR 1158; Mar. 2, 2007, D.C. Law 16-191, § 120, 53 DCR 6794.)

Section references. — This section is referred to in §§ 2-532, 2-533, and 2-538.

Prior Codifications. — 1981 Ed., § 1-1527. 1973 Ed., § 1-1527.

Effect of amendments. — D.C. Law 13-283, in subsec. (b), substituted “public body” for “Mayor or the agency”; and added subsecs. (d) and (e).

D.C. Law 14-42, in subsec. (e), substituted “section 1803 of Title 6 of the District of Columbia Municipal Regulations” for “section 1803 of the District of Columbia Personnel Regulations”.

D.C. Law 15-105, in subsec. (a), validated previously made technical corrections.

D.C. Law 15-256, in subsec. (a), substituted “Except as provided in subsection (a-1), any person” for “Any person”; added subsec. (a-1); and, in subsec. (b), substituted “subsection (a) or (a-1)” for “subsection (a)”.

D.C. Law 16-191, in subsec. (a), validated a previously made technical correction.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of the Freedom of Information Legislative Records Clarification Temporary Amendment Act of 2003 (D.C. Law 15-83, March 10, 2004, law notification 51 DCR 3375).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(a) of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

For temporary (90 day) amendment of section, see §§ 2(b) and 3 of Freedom of Information Legislative Records Clarification Emergency Amendment Act of 2003 (D.C. Act 15-190, October 24, 2003, 50 DCR 9499).

For temporary (90 day) amendment of section, see § 2(b) of Freedom of Information Legislative Records Clarification Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-372, February 19, 2004, 51 DCR 2611).

For temporary (90 day) amendment of section, see § 2(c) of Freedom of Information Legislative Records Clarification Emergency Amendment Act of 2004 (D.C. Act 15-591, November 1, 2004, 51 DCR 10729).

For temporary (90 day) amendment of section, see § 2(c) of Freedom of Information Leg-

islative Records Clarification Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-23, February 17, 2005, 52 DCR 2975).

Legislative history of Law 1-96. — For legislative history of D.C. Law 1-96, see Historical and Statutory Notes following § 2-531.

Legislative history of Law 13-283. — For D.C. Law 13-283, see notes following § 2-502.

Legislative history of Law 14-42. — For Law 14-42, see notes following § 2-402.

Legislative history of Law 15-256. — For Law 15-256, see notes following § 2-532.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 2-218.02.

Delegation of Authority. — Delegation of Authority—Secretary of the District of Columbia, see Mayor’s Order 95-26, January 27, 1995.

Delegation of Authority—Office of the Secretary, see Mayor’s Order 97-87, May 6, 1997 (44 DCR 2958).

Delegation of Authority to Review and Determine Administrative Petitions or Appeals filed under the Freedom of Information Act, see Mayor’s Order 2004-205, December 29, 2004 (52 DCR 87).

Delegation of Authority to Review and Determine Administrative Petitions or Appeals Filed Under the Freedom of Information Act, see Mayor’s Order 2005-98, June 14, 2005 (52 DCR 8164).

Delegation of Authority to Review and Determine Administrative Petitions or Appeals Filed Under the Freedom of Information Act, see Mayor’s Order 2005-190, December 2, 2005 (53 DCR 694).

Delegation of authority to Review and Determine Administrative Petitions or Appeals Filed Under the Freedom of Information Act, see Mayor’s Order 2007-62, March 6, 2007 (54 DCR 7788).

Redelegation of Authority Under D.C. Law 1-96, the Freedom of Information Act of 1976; Rescission of Mayor’s Order 87-6: See Mayor’s Order 89-188, August 30, 1989.

Editor’s notes. — Section 3 of D.C. Law 15-256 provided: “Sec. 3. Applicability. This act shall apply with respect to any requests for records pending on the effective date of this act, whether or not the request was made prior to that date, and shall apply to any civil action pending on that date.”

CASE NOTES

ANALYSIS

Costs and attorney fees.
Exhaustion of administrative remedies.

Costs and attorney fees.

Trial court’s failure to make finding as to whether attorney who requested documents

under District of Columbia Freedom of Information Act (DC FOIA) prevailed with respect to documents provided to him after filing of his action warranted remand for determination of whether attorney was entitled to award of costs with respect to those documents. D.C. Code 1981, § 1-1527(c). *McReady v. Department of*

Consumer & Regulatory Affairs, 618 A.2d 609, 1992 D.C. App. LEXIS 291 (1992).

Attorney, proceeding pro se, in District of Columbia Freedom of Information Act (DC FOIA) action is not eligible to receive attorney fee award; legislature did not indicate intent to allow award of attorney fees under DC FOIA to pro se attorneys, there was no evidence that legislature was aware of federal district court case allowing such awards under federal FOIA at time it enacted DC FOIA which was patterned after federal FOIA, it was likely that legislature contemplated attorney-client relationship as predicate for award, and goal of encouraging those seeking documents to consult attorneys before proceeding with potentially unnecessary litigation would not be furthered by allowing award. D.C. Code 1981, § 1-1527(c); 5 U.S.C. § 552b(i). *McReady v. Department of Consumer & Regulatory Affairs*, 618 A.2d 609, 1992 D.C. App. LEXIS 291 (1992).

Award of costs may be made under District of Columbia Freedom of Information Act (DC FOIA) only if plaintiff has prevailed on points for which he seeks costs. D.C. Code 1981, § 1-1527(c). *McReady v. Department of Consumer & Regulatory Affairs*, 618 A.2d 609, 1992 D.C. App. LEXIS 291 (1992).

Finding that releases of documents requested by attorney who filed action under District of Columbia Freedom of Information Act (DC FOIA) was not prompted by attorney's action, so that he was not entitled to award of costs as prevailing party with respect to those documents, was supported by evidence that documents in question were released in response to new DC FOIA request, and that trial court had already upheld agency's basis for withholding documents and had ordered that they not be produced. D.C. Code 1981, §§ 1-1524(a)(2), 1-1527(c). *McReady v. Department of Consumer & Regulatory Affairs*, 618 A.2d 609, 1992 D.C. App. LEXIS 291 (1992).

Remand for supplemental findings was appropriate in view of conflicting findings whether plaintiff prevailed within meaning of District of Columbia Freedom of Information Act (D.C.-FOIA) and whether he was entitled to discretionary award of costs. D.C. Code 1981, § 1-1527(c). *McReady v. Department of Consumer & Regulatory Affairs*, 618 A.2d 609, 1992 D.C. App. LEXIS 291 (1992).

District of Columbia Freedom of Information Act (D.C.-FOIA) is "applicable statute" within meaning of rule entitling prevailing party to costs except when express provision is made in applicable statute. D.C. Code 1981, § 1-1527(c); Civil Rule 54(d). *McReady v. Department of Consumer & Regulatory Affairs*, 618 A.2d 609, 1992 D.C. App. LEXIS 291 (1992).

Pro se nonattorney plaintiff could not recover attorney fees pursuant to District of Columbia

Freedom of Information Act (D.C.-FOIA); plain and ordinary meaning of "attorney fees" requires payment to attorney. D.C. Code 1981, § 1-1527(c). *McReady v. Department of Consumer & Regulatory Affairs*, 618 A.2d 609, 1992 D.C. App. LEXIS 291 (1992).

Attorney-client relationship should be prerequisite to award of attorney fees under District of Columbia Freedom of Information Act (D.C.-FOIA). D.C. Code 1981, § 1-1527(c). *McReady v. Department of Consumer & Regulatory Affairs*, 618 A.2d 609, 1992 D.C. App. LEXIS 291 (1992).

Pro se nonattorney plaintiff who prevails in whole or in part pursuant to District of Columbia Freedom of Information Act (D.C.-FOIA) may be entitled to discretionary award of costs. D.C. Code 1981, § 1-1527(c). *McReady v. Department of Consumer & Regulatory Affairs*, 618 A.2d 609, 1992 D.C. App. LEXIS 291 (1992).

News journal showed a causal nexus between its action for an injunction to compel the District of Columbia to produce documents in response to a request under the District of Columbia Freedom of Information Act (FOIA) and the District of Columbia's search for and production of responsive documents, and thus news journal was a prevailing party and could seek attorney fees and costs pursuant to the FOIA; the District of Columbia did not identify all responsive documents prior to the commencement of the action and was so excessively dilatory in the performance of its duties under the FOIA that trial court issued multiple orders to compel delivery of responsive documents by specified dates, and the delay could not be characterized as an unavoidable delay accompanied by due diligence. *Prison Legal News v. D.C.*, 139 WLR 2677 (Super. Ct. 2011).

News journal that prevailed in its action for an injunction to compel the District of Columbia to produce documents in response to a request under the District of Columbia Freedom of Information Act (FOIA) would be granted attorney fees and costs pursuant to the FOIA; four-factor analysis for determining whether an award of attorney fees and costs was warranted under the FOIA, i.e., an analysis involving the factors of the public benefit derived from the case, the commercial benefit to the complainant, the nature of the complainant's interest in the records sought, and whether the government's withholding of the requested records had a reasonable basis in law, weighed in favor of news journal. *Prison Legal News v. D.C.*, 139 WLR 2677 (Super. Ct. 2011).

Exhaustion of administrative remedies.

Under District of Columbia Freedom of Information Act (DC-FOIA), once administrative remedies have been exhausted, person seeking

disclosure may institute proceedings in superior court for District of Columbia. D.C. Code 1981, § 1-1527(a)(1). *Anderson v. Thomas*, 683 A.2d 156, 1996 D.C. App. LEXIS 207 (1996).

§ 2-538. Oversight of disclosure activities.

(a) On or before February 1 of each year, the Mayor shall request from each public body and submit to the Council, a report covering the public-record-disclosure activities of each public body during the preceding fiscal year. The report shall include:

(1) The number of requests for records received by the public body and the number of requests processed;

(2) The number of determinations made by each public body not to comply with requests for records made to the public body pursuant to this subchapter and the reasons for each determination;

(3) The number of requests for records pending before the public body as of September 30 of the preceding year, and the median number of days that the requests had been pending before the public body as of that date;

(4) The number of appeals made pursuant to § 2-537(a), the result of the appeals, and the reason for the action upon each appeal that results in a denial of information;

(5) The number of employees found guilty of a misdemeanor pursuant to § 2-537(d);

(6) The median number of days taken by the public body to process different types of requests, and the number of requests processed within 15 days, the number of requests processed between 16 and 25 days, and the number of requests processed in 26 days or more;

(7) The total amount of fees collected by the public body for processing requests;

(8) The number of hours that staff devoted to processing requests for records pursuant to this section, and the total amount expended by the public body for processing these requests; and

(9) A qualitative description or summary statement, and conclusions drawn from the data regarding compliance with this subchapter.

(b) The Mayor shall make these reports available to the public on the Internet or by other electronic means.

(c) The Corporation Counsel shall submit an annual report on or before February 1 of each calendar year, which shall include for the prior fiscal year, a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of the case, and the costs assessed pursuant to § 2-537(c).

(d) Each public body subject to the provisions of this subchapter shall designate a Freedom of Information Officer. As of November 1, 2001, the Mayor shall provide to these officers on their appointment a minimum of 8 hours of training regarding implementation and compliance with this subchapter.

(Oct. 21, 1968, Pub. L. 90-614, title II, § 208, as added Mar. 25, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b; Apr. 27, 2001, D.C. Law 13-283, § 3(g), 48 DCR 1917; Oct. 26, 2001, D.C. Law 14-42, § 3(b), 48 DCR 7612; Mar. 2, 2007, D.C. Law 16-191, § 10(a), 54 DCR 6794.)

Prior Codifications. — 1981 Ed., § 1-1528. 1973 Ed., § 1-1528.

Effect of amendments. — D.C. Law 13-283 rewrote the section which prior thereto read:

“On or before the 30th day of June of each calendar year, the Mayor shall compile and submit to the Council of the District of Columbia a report covering the public-record-disclosure activities of each agency and of the executive branch as a whole during the preceding calendar year. The report shall include:

“(1) The number of determinations made by each agency not to comply with requests for records made to such agency under this subchapter and the reasons for each such determination;

“(2) The number of appeals made by persons under § 2-537(a), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

“(3) The names and titles or positions of each person responsible for the denial of records requested under this subchapter, and the number of instances of participation for each such person;

“(4) A copy of the fee schedule and the total amount of fees collected by each agency for making records available under this subchapter;

“(5) Such other information as indicates efforts to administer fully this subchapter; and

“(6) For the prior calendar year, a listing of the total number of cases arising under this subchapter, the total number of cases in which a request was denied in whole or in part, the total number of times in which each exemption provided under § 2-534 was cited as a reason for denial of a request, and the total amount of fees collected under § 2-532(b). Such report shall also include a description of the efforts undertaken by the Mayor to encourage agency compliance with this subchapter.”

D.C. Law 14-42, in subsec. (a), substituted “preceding fiscal year” for “proceeding fiscal year”.

D.C. Law 16-191 substituted “15” for “10”; substituted “between 16 and 25 days” for “between 11 and 20 days”; and substituted “26 days” for “21 days”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(b) of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

Legislative history of Law 1-96. — For legislative history of D.C. Law 1-96, see Historical and Statutory Notes following § 2-531.

Legislative history of Law 13-283. — For D.C. Law 13-283, see notes following § 2-502.

Legislative history of Law 14-42. — For Law 14-42, see notes following § 2-402.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 2-218.02.

§ 2-539. Definitions.

For purposes of this subchapter, the terms “Mayor,” “Council,” “District,” “agency,” “rule,” “rulemaking,” “person,” “party,” “order,” “relief,” “proceeding,” “public record,” and “adjudication” shall have the meaning as provided in § 2-502.

(Oct. 21, 1968, Pub. L. 90-614, title II, § 209, as added Mar. 25, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

Prior Codifications. — 1981 Ed., § 1-1529. 1973 Ed., § 1-1529.

Legislative history of Law 1-96. — For

legislative history of D.C. Law 1-96, see Historical and Statutory Notes following § 2-531.

CASE NOTES

ANALYSIS

Agencies or custodians affected.
Matters subject to disclosure.

Agencies or custodians affected.

Under District of Columbia law, metropolitan area transit authority was not “agency” within meaning of D.C. Administrative Procedure Act, and thus was not agency subject to disclosure requirements of District of Columbia Freedom of Information Act (DC-FOIA). D.C. Code 1981,

§§ 1-1502(3-5), 1-1529. *Kiska Constr. Corporation-U.S.A. v. Washington Metro. Area Transit Auth.*, 167 F.3d 608, 1999 U.S. App. LEXIS 2505 (C.A.D.C. 1999).

Matters subject to disclosure.

Freedom of Information Act’s (FOIA) law-enforcement exemption applied to investigative report prepared by Metropolitan Police Department of the District of Columbia and obtained by Federal Bureau of Investigation (FBI) as part of background investigation of plaintiff;

FBI requested permission from Department to release information, which request was denied, and plaintiff's proper recourse was to seek copy of report directly from the District of Columbia under its own Freedom of Information Act. 5

U.S.C. § 552(b)(7)(D); D.C. Code 1981, §§ 1-1522, 1-1529. *Beard v. Department of Justice*, 917 F. Supp. 61, 1996 U.S. Dist. LEXIS 2841 (1996).

§ 2-540. Short title.

This subchapter may be cited as the "Freedom of Information Act of 1976". (Oct. 21, 1968, Pub. L. 90-614, title II, § 210, as added Mar. 13, 2004, D.C. Law 15-105, § 5, 51 DCR 881; Mar. 2, 2007, D.C. Law 16-191, § 10(b), 54 DCR 6794.)

Effect of amendments. — D.C. Law 16-191 rewrote the section which had previously read as follows: "This subchapter may be cited as the "Freedom of Information Act"."

Legislative history of Law 15-105. — For Law 15-105, see notes following § 2-301.05.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 2-218.02.

Subchapter III. Legal Publication.

§ 2-551. Definitions.

For purposes of this subchapter:

(1) The terms "Mayor," "Council," "District," "agency," "rule," "rulemaking," "person," "licensing," "publish," and "regulation" (except when used in the term "District of Columbia Municipal Regulation") shall have the meaning provided in § 2-502.

(2) The terms "Commissioner," "District of Columbia Council," "Chairman," "act," and "District of Columbia courts" shall have the meaning provided in § 1-203.01.

(3) The term "Administrator" means the person appointed by the Mayor to supervise and control the District of Columbia Office of Documents in accordance with § 2-611.

(4) The phrase "D.C. Official Code" means the Code of the District of Columbia laws as provided for in Chapter 3 of Act of July 30, 1947 (61 Stat. 636) and any continuations, supplements, or revisions thereof authorized by act, congressional resolution, or act.

(5)(A) The phrase "document having general applicability and legal effect" means any document issued under lawful authority prescribing a sanction or course of conduct, conferring a right, privilege, authority, or immunity or imposing an obligation, and applicable to the general public, members of a class or persons in a locality, as distinguished from named individuals or organizations.

(B) The phrase "document having general applicability and legal effect" does not include any act to be codified in the District of Columbia Code or a personnel manual or internal staff directive solely applicable to employees or agents of the District of Columbia, or any statement for guiding, directing or otherwise regulating vehicular or pedestrian traffic, including any statement controlling parking, standing, stopping or a construction detour; provided, that:

(i) The contents of the statement are indicated to the public on one or more signs, signals, meters, markings or other similar devices located on or adjacent to a street, avenue, road, highway or other public space;

(ii) The proposed installation, modification or removal of the statement is based on engineering or other technical considerations;

(iii) The proposed installation, modification or removal of the statement does not involve substantial policy considerations; and

(iv) The Council and the affected Advisory Neighborhood Commissions (“ANC”) are provided with 30-days written notice, excluding Saturdays, Sundays and legal holidays, of an agency’s intent to install, modify or remove any of these statements, and any ANC recommendation, if provided, is given great weight pursuant to § 1-309.10.

(Oct. 21, 1968, Pub. L. 90-614, title III, § 301, as added Mar. 6, 1979, D.C. Law 2-153, § 4, 25 DCR 6960; Apr. 3, 2001, D.C. Law 13-249, § 3, 48 DCR 662; Apr. 7, 2006, D.C. Law 16-91, § 134, 52 DCR 10637; Sept. 24, 2010, D.C. Law 18-223, § 1083(a), 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 1-1531. 1973 Ed., § 1-1531.

Effect of amendments. — D.C. Law 13-249, in par. (5), designated the first sentence as subpar. (A), and added subpar. (B).

D.C. Law 16-91, in subpar. (5)(A), deleted the sentence which had read as follows: “The phrase ‘document having general applicability and legal effect’ does not include any act to be codified in the D.C. Official Code or a personnel manual or internal staff directive solely applicable to employees or agents of the District of Columbia.”

D.C. Law 18-223, in par. (1), substituted “licensing,” “publish,” for “licensing.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 1083(a) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 2-153. — For legislative history of D.C. Law 2-153, see Historical and Statutory Notes following § 2-505.

Legislative history of Law 13-249. — For D.C. Law 13-249, see notes following § 2-502.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 2-218.54.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 2-218.76.

§ 2-552. District of Columbia Municipal Regulations.

(a) The District of Columbia Office of Documents, established pursuant to § 2-611, shall supervise, manage, and direct the preparation, editing, publishing, and supplementation of an official legal compilation entitled the District of Columbia Municipal Regulations (DCMR). The District of Columbia Municipal Regulations shall be published in a manner to promote efficient public access to all current District of Columbia rules and regulations.

(b) Except as otherwise provided by law, the following documents shall be accurately compiled in the District of Columbia Municipal Regulations:

(1) Every rule, regulation, and document having general applicability and legal effect adopted by the Commissioner, the Mayor, the District of Columbia Council, and each agency;

(2) Every act of the Council which is not codified or to be codified in the D.C. Official Code and which is not enacted in emergency circumstances as provided in § 1-204.12;

(3) Every rule, regulation, and document having general applicability and legal effect which is adopted under authority of law by a board, commission, or

instrumentality of the District of Columbia: Provided, that nothing in this paragraph shall be construed to apply to the District of Columbia courts; and

(4) Any document which the Council by resolution finds to be a document having general applicability and legal effect and which the Council by resolution orders to be printed.

(c) The District of Columbia Municipal Regulations shall contain the entire text of each document to be compiled under this section without any incorporation by reference unless:

(1) The publication of the document would be impractical due to its unusual lengthiness;

(2) The document is not itself a rule, regulation, or document having general applicability and legal effect but is incorporated by reference in a rule, regulation, or document having general applicability and legal effect;

(3) A copy of the document incorporated by reference is available to the public at every public library branch in the District of Columbia and at the relevant agency headquarters; and

(4) The incorporation by reference includes a specific indication of how and where a copy of such document may be inspected and obtained.

(d) The Administrator shall ensure that the District of Columbia Municipal Regulations shall contain the following research aids:

(1) A citation or historical note to the original rule or act from which each section in the District of Columbia Municipal Regulations was derived;

(2) A reference to where the original form of each rule, act, or document contained in the District of Columbia Municipal Regulations can be inspected or copied;

(3) Parallel reference tables indexing the sections of the District of Columbia Municipal Regulations to enabling legislation and other provisions of law which the District of Columbia Municipal Regulations implements;

(4) Major parts organized according to subject-matter headings with subdivisions thereof organized according to government agency titles; and

(5) A comprehensive index relating sections of the District of Columbia Municipal Regulations to subject-matter topics and to the organizational units of government.

(e) The Administrator may prepare (or procure by contract in accordance with applicable law) and include in the District of Columbia Municipal Regulations annotations of judicial decisions, and other explanatory material relating to any document published in the District of Columbia Municipal Regulations.

(f) Each complete edition of the entire District of Columbia Municipal Regulations may be published in segments if it is deemed to be expeditious in the judgment of the Administrator.

(g) All documents compiled in the District of Columbia Municipal Regulations shall be formulated in accordance with the requirements of § 2-632.

(Oct. 21, 1968, Pub. L. 90-614, title III, § 302, as added Mar. 6, 1979, D.C. Law 2-153, § 4, 25 DCR 6960; Sept. 29, 2006, D.C. Law 16-169, § 5(a), 53 DCR 6223.)

Prior Codifications. — 1981 Ed., § 1-1532. 1973 Ed., § 1-1532.

Effect of amendments. — D.C. Law 16-169 adds subsec. (g).

Legislative history of Law 2-153. — For legislative history of D.C. Law 2-153, see Historical and Statutory Notes following § 2-505.

Legislative history of Law 16-169. — Law 16-169, the “Drug Offense Driving Privileges Revocation and Disqualification Amendment

Act of 2006”, was introduced in Council and assigned Bill No. 16-665 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 18, 2006, it was assigned Act No. 16-438 and transmitted to both Houses of Congress for its review. D.C. Law 16-169 became effective on September 29, 2006.

§ 2-553. District of Columbia Register.

(a) The District of Columbia Office of Documents shall also supervise, manage, and direct the preparation, editing, and publishing of the District of Columbia Register which shall serve as the only official legal bulletin in the District of Columbia government and the temporary supplement of the District of Columbia Municipal Regulations.

(b) The District of Columbia Register shall contain the entire text of the following:

(1) Every rule, regulation, and document having general applicability and legal effect required to be but not yet published and integrated in the District of Columbia Municipal Regulations as provided in this subchapter;

(2) Every notice of public hearing issued by an agency;

(3) Every notice of proposed agency rulemaking or repeal and every other document required to be published under this chapter; and

(4) Every act, resolution, and notice of the Council and any other document requested to be published by the Chairman of the Council or his or her designee.

(c) The Administrator is authorized to publish in the District of Columbia Register:

(1) Any document requested to be published by the Joint Committee on Judicial Administration in the District of Columbia;

(2) Information on changes in the organization of the District of Columbia government;

(3) Notices of public hearings not published under authority of subsection (b) of this section; and

(4) Such other matters as the Mayor may from time to time determine to be of general public interest.

(d) The Administrator may exercise the discretion of omitting from the District of Columbia Register the publication of the entire text of a document if:

(1) Such publication would be unduly cumbersome or expensive; and

(2) If, in lieu of such publication, there is included in the District of Columbia Register a notice stating the general subject matter of any document so omitted and the specific manner in which a copy of such document may be obtained.

(e) If the text of an adopted act or rule is the same as the text of the previously published proposed act or rule, the Administrator may insert in the District of Columbia Register a notation to this effect, giving the publication

date of and citation to the District of Columbia Register issue containing the proposed act or rule.

(f) If, after a proposed rule has been published initially in the District of Columbia Register, an agency decides to alter the initial text so that the proposed rule is substantially different from the initial text, the agency shall submit the altered text as though for initial publication. The alterations shall be indicated by the use of symbols determined by the Administrator.

(g) The District of Columbia Register shall be published on at least each Friday, or, if Friday is a legal holiday, on the next working day. Each year the Administrator shall publish a cumulative index of all matters published in the District of Columbia Register during the year.

(h) Each issue of the District of Columbia Register shall be published on the issue date, which shall appear on the 1st page of the issue. If for any reason the issue is published after the issue date that appears on the District of Columbia Register, a notice stating the actual date of publication shall be separately published and attached to each issue. All time computations based upon publication in the District of Columbia Register shall commence from the later of the issue date and the actual date of publication.

(i) All documents published in the District of Columbia Register shall be formulated in accordance with the requirements of § 2-632.

(Oct. 21, 1968, Pub. L. 90-614, title III, § 303, as added Mar. 6, 1979, D.C. Law 2-153, § 4, 25 DCR 6960; Sept. 29, 2006, D.C. Law 16-169, § 5(b), 53 DCR 6223; Sept. 24, 2010, D.C. Law 18-223, § 1083(b), 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 1-1533. 1973 Ed., § 1-1533.

Effect of amendments. — D.C. Law 16-169 adds subsec. (i).

D.C. Law 18-223, in subsec. (g), deleted "quarterly" following "shall publish"; and rewrote subsec. (h), which had read as follows: "(h) On each document published in the District of Columbia Register there shall appear the date upon which such document was filed with the Administrator pursuant to § 2-554. On each issue of the District of Columbia Register there shall appear on its cover the actual date such issue was generally circulated to the public for review and comment: Provided, that should the District of Columbia Register be generally circulated after the cover date shown, a notice stating the correct date shall be attached

thereto. All time computations based upon publication in the District of Columbia Register shall commence from the cover date, or, if corrected, the date of notice thereof. The provisions of this subsection shall apply to any and all supplemental editions to the District of Columbia Register."

Emergency legislation. — For temporary (90 day) amendment of section, see § 1083(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 2-153. — For legislative history of D.C. Law 2-153, see Historical and Statutory Notes following § 2-505.

Legislative history of Law 16-169. — For Law 16-169, see notes following § 2-552.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 2-218.76.

§ 2-554. Documents to be filed in the District of Columbia Office of Documents.

Any document required or authorized to be published in the District of Columbia Municipal Regulations or the District of Columbia Register shall be filed with the District of Columbia Office of Documents. If a document has been published pursuant to subchapter I of this chapter and forwarded to the Office of the Secretariat prior to March 6, 1979, such document need not be filed with

the District of Columbia Office of Documents, unless the Administrator otherwise notifies the person responsible for filing the document.

(Oct. 21, 1968, Pub. L. 90-614, title III, § 304, as added Mar. 6, 1979, D.C. Law 2-153, § 4, 25 DCR 6960.)

Section references. — This section is referred to in § 2-556.

Prior Codifications. — 1981 Ed., § 1-1534. 1973 Ed., § 1-1534.

Legislative history of Law 2-153. — For legislative history of D.C. Law 2-153, see Historical and Statutory Notes following § 2-505.

§ 2-555. Permanent supplements to the District of Columbia Municipal Regulations.

(a) The Mayor shall:

(1) Make available, by May 1, 2001, a complete and current version of the District of Columbia Municipal Regulations (“DCMR”), with all sections compiled by subject matter, and an index to the sections;

(2) Publish, no later than 60 days after the beginning of each fiscal year, a cumulative supplement to the DCMR containing all newly promulgated DCMR provisions as of the first of the fiscal year;

(3) Provide a summary statement at the beginning of all newly promulgated regulations;

(4) Make available through the Internet, by January 1, 2002, an electronic version of the official text of the DCMR, with all sections compiled by subject matter, and an index to the sections, integrating all newly promulgated DCMR provisions since the last version; and

(5) Update the electronic version of the official text of the DCMR prior to the effective date of any newly promulgated DCMR provisions, integrating the newly promulgated DCMR provisions since the last version.

(b) The Mayor may enter into an agreement with private contractors of database services to offer the DCMR in an electronic version.

(Oct. 21, 1968, Pub. L. 90-614, title III, § 305, as added Mar. 6, 1979, D.C. Law 2-153, § 4, 25 DCR 6960; Apr. 3, 2001, D.C. Law 13-232, § 2, 48 DCR 582.)

Prior Codifications. — 1981 Ed., § 1-1535. 1973 Ed., § 1-1535.

Effect of amendments. — D.C. Law 13-232 rewrote the section which prior thereto read:

“At least once each year, every document required to be compiled pursuant to § 2-552 shall be permanently integrated into the District of Columbia Municipal Regulations by publication of loose-leaf pages or other appropriate permanent supplements of the District of Columbia Municipal Regulations. The index of the DCMR shall be similarly supplemented or reissued.”

Legislative history of Law 2-153. — For legislative history of D.C. Law 2-153, see Historical and Statutory Notes following § 2-505.

Legislative history of Law 13-232. — Law 13-232, the “District of Columbia Municipal Regulations Publication Improvement Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-402, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-509 and transmitted to Both Houses of Congress for its review. D.C. Law 13-232 became effective on April 3, 2001.

§ 2-556. Documents to be filed with Administrator.

Except as provided in § 2-554, 2 copies of any document to be published pursuant to this subchapter shall be filed with the Administrator. The Administrator shall immediately review filed documents to determine their conformity to the provisions of this subchapter and to editorial standards promulgated by the Administrator. Upon the Administrator's determination of a document's conformity with this section, 1 copy of each document shall be prepared for publication and 1 copy kept for permanent historic preservation.

(Oct. 21, 1968, Pub. L. 90-614, title III, § 306, as added Mar. 6, 1979, D.C. Law 2-153, § 4, 25 DCR 6960.)

Prior Codifications. — 1981 Ed., § 1-1536.
1973 Ed., § 1-1536.

legislative history of D.C. Law 2-153, see Historical and Statutory Notes following § 2-505.

Legislative history of Law 2-153. — For

§ 2-557. Publication, specifications, and distribution of the District of Columbia Municipal Regulations.

(a) The District of Columbia Municipal Regulations and its permanent supplements shall be published pursuant to typographical and contractual arrangements which ensure that the District of Columbia Municipal Regulations can be purchased at a reasonable cost in its entirety or in portions of related rules, regulations, or documents having general applicability and legal effect.

(b) Paper copies of the District of Columbia Municipal Regulations shall be printed by each regular branch of the District of Columbia Public Library system and each regular branch shall make a paper copy of the District of Columbia Municipal Regulations available to the public.

(Oct. 21, 1968, Pub. L. 90-614, title III, § 307, as added Mar. 6, 1979, D.C. Law 2-153, § 4, 25 DCR 6960; Sept. 24, 2010, D.C. Law 18-223, § 1083(c), 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 1-1537.
1973 Ed., § 1-1537.

Effect of amendments. — D.C. Law 18-223 rewrote subsec. (b), which had read as follows: "(b) Copies of the District of Columbia Municipal Regulations shall be available to the public at each regular branch of the District of Columbia library system and to each Advisory Neighborhood Commission established by the Council."

Emergency legislation. — For temporary (90 day) amendment of section, see § 1083(c) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 2-153. — For legislative history of D.C. Law 2-153, see Historical and Statutory Notes following § 2-505.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 2-218.76.

§ 2-558. Legal effectiveness of documents.

(a) Notwithstanding any other provision of this subchapter, any rule, regulation, or document having general applicability and legal effect which has been adopted or enacted by the Commissioner, the Mayor, the District of

Columbia Council, an agency, or other instrumentality of the District before March 6, 1979, and which is not published in the District of Columbia Municipal Regulations on or before June 30, 1984, shall not be in effect thereafter.

(b) Except in the case of emergency rules or acts, no rule or document of general applicability and legal effect adopted or enacted on or after March 6, 1979, shall become effective until after its publication in the District of Columbia Register, nor shall such rule or document of general applicability and legal effect become effective if it is required by law, other than subchapter I of this chapter or this subchapter, to be otherwise published, until such rule or document of general applicability and legal effect is also published as required by such law.

(Oct. 21, 1968, Pub. L. 90-614, title III, § 308, as added Mar. 6, 1979, D.C. Law 2-153, § 4, 25 DCR 6960; July 1, 1980, D.C. Law 3-75, § 2, 27 DCR 2277; Oct. 17, 1981, D.C. Law 4-41, § 2, 28 DCR 3423; May 20, 1983, D.C. Law 5-10, § 2, 30 DCR 1793; Aug. 2, 1983, D.C. Law 5-22, § 2, 30 DCR 3337.)

Prior Codifications. — 1981 Ed., § 1-1538. 1973 Ed., § 1-1538.

Legislative history of Law 2-153. — For legislative history of D.C. Law 2-153, see Historical and Statutory Notes following § 2-505.

Legislative history of Law 3-75. — Law 3-75 was introduced in Council and assigned Bill No. 3-253, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 22, 1980 and May 6, 1980, respectively. Signed by the Mayor on May 14, 1980, it was assigned Act No. 3-184 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-41. — Law 4-41 was introduced in Council and assigned Bill No. 4-266, which was referred to the Committee on Government Operations and the Committee on the Judiciary. The Bill was adopted on first and second readings on July 1, 1981 and July 14, 1981, respectively. Signed by the Mayor on July 23, 1981, it was assigned Act No. 4-70 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-10. — Law 5-10 was introduced in Council and assigned Bill No. 5-150, which was retained by Council.

The Bill was adopted on first and second readings on March 15, 1983 and March 29, 1983, respectively. Signed by the Mayor on April 6, 1983, it was assigned Act No. 5-24 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-22. — Law 5-22 was introduced in Council and assigned Bill No. 5-151, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 10, 1983 and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-39 and transmitted to both Houses of Congress for its review.

Editor's notes. — Publication requirement exemption: Section 5 of D.C. Law 16-300 provided: "Notwithstanding section 8 of this act and sections 204 and 308(b) of the District of Columbia Administrative Procedure Act, effective March 6, 1979 (D.C. Law 2-153; D.C. Official Code §§ 2-602 and 2-558(b)), the text, maps, and graphics of the District elements of the Comprehensive Plan for the National Capital, as amended by this act, need not be published in the District of Columbia Register to become effective."

CASE NOTES

ANALYSIS

Failure to publish.
Federal directives.
In general.
Presumptions and burden of proof.
Review.

Failure to publish.

Claim of inmate and his wife that Depart-

ment of Corrections' action in failing to comply with public notice and comment requirements of District of Columbia Administrative Procedures Act, as well as publication requirement of District of Columbia law, rendered visitation regulations invalid was more properly decided in the first instance by local courts of District of Columbia, rather than by federal district court. D.C. Code 1981, §§ 1-1501 et seq., 1-1538(b).

Robinson v. Palmer, 841 F.2d 1151, 1988 U.S. App. LEXIS 3410 (C.A.D.C. 1988).

District of Columbia police regulation prohibiting gambling on vacant or unoccupied property where conduct can be seen or heard from public highway was not rendered ineffective by failure to, as required by Administrative Procedure Act, meet original July 1st deadline for publication in the District of Columbia Municipal Regulations, although regulations were not published by that deadline where the deadline had been extended before the instant challengers of regulation were arrested. D.C. Code 1981, §§ 1-319, 1-1538(a). Green v. District of Columbia, 710 F.2d 876, 1983 U.S. App. LEXIS 26335 (C.A.D.C. 1983).

That documents ratifying Interstate Compact on Juveniles were not published pursuant to Documents Act did not render compact ineffective, inasmuch as compact became law once ratification papers were executed and that historical fact could not be altered by Documents Act, which was enacted years after compact's ratification. D.C. Code 1981, §§ 1-1531 to 1-1538, 32-1101 to 32-1106. In re O.M., 565 A.2d 573, 1989 D.C. App. LEXIS 214 (1989), writ of certiorari denied by 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953, 1990 U.S. LEXIS 1859, 58 U.S.L.W. 3658 (1990).

That documents ratifying Interstate Compact on Juveniles were not published pursuant to Documents Act did not render compact ineffective, inasmuch as compact became law once ratification papers were executed and that historical fact could not be altered by Documents Act, which was enacted years after compact's ratification. D.C. Code 1981, §§ 1-1531 to 1-1538, 32-1101 to 32-1106. In re O.M., 565 A.2d 573, 1989 D.C. App. LEXIS 214 (1989), writ of certiorari denied by 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953, 1990 U.S. LEXIS 1859, 58 U.S.L.W. 3658 (1990).

Federal directives.

Implementation of mandatory federal directive that permits no choice other than to initiate administrative or judicial challenge, is not rule making under Administrative Procedure Act in that decision to challenge is not "fundamental policy determination." D.C. Code 1981, §§ 1-1501 et seq., 1-1506, 1-1538; Social Security Act, § 1116, as amended, 42 U.S.C. § 1316. Hamer v. Department of Human Services, etc., 492 A.2d 1253, 1985 D.C. App. LEXIS 382 (1985).

In general.

Police and Firefighters Retirement and Relief Board could not, in proceeding on petition by daughter of retired police officer for a survivor's annuity due to low mental capacity, apply a claim-filing deadline to bar daughter's claim, as the Board would be imposing an additional

eligibility requirement for receiving a survivor's annuity under Retirement and Disability Act, any such rule would not be an "interpretive rule," instead the rule would be a "legislative rule," and legislative rules were subject to the notice and comment provisions of District of Columbia Administrative Procedure Act (DCAPA); in asserting the authority to impose the additional requirement, the Board was not purporting to interpret any word or phrase under the Act or the implementing regulations, but instead proposed to supplement the Act and regulations with a new substantive rule of general application. Andrews v. D.C. Police & Firefighters Ret. & Relief Bd., 991 A.2d 763, 2010 D.C. App. LEXIS 135 (2010).

District of Columbia was not required to promulgate rules interpreting and implementing Motor Vehicle Fuel Tax Act amendment which repealed statute granting refund to purchasers within District of motor vehicle fuel used for nonhighway purposes, in that statute contained terms that allowed for no discretion and were sufficiently precise to be applied without implementing rules, so that rule making would be contrary to public interest and a futile gesture. D.C. Code 1967, § 47-1910. Hutchison Bros. Excavating Co. v. District of Columbia, 511 A.2d 3, 1986 D.C. App. LEXIS 350 (1986).

Presumptions and burden of proof.

Juvenile failed to establish that District of Columbia was not signatory to Interstate Compact on Juveniles, as would bar juvenile's rendition to Alabama under compact; District mayor's published order designating interstate juvenile compact officer was presumptive proof that District was signatory to compact, and juvenile failed to rebut that presumption. D.C. Code 1981, §§ 1-227(e), 1-1531 to 1-1538, 1-1541, 32-1101 to 32-1106. In re O.M., 565 A.2d 573, 1989 D.C. App. LEXIS 214 (1989), writ of certiorari denied by 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953, 1990 U.S. LEXIS 1859, 58 U.S.L.W. 3658 (1990).

Review.

Question of whether Police and Firefighters Retirement and Relief Board could engage in adjudicative rule-making and adopt a claim-filing deadline, in proceeding on petition by daughter of retired police officer for a survivor's annuity due to low mental capacity, was for the Court of Appeals rather than the Board, in daughter's appeal of Board order denying her petition as untimely, as the resolution of the question turned on the applicability of the District of Columbia Administrative Procedure Act (DCAPA), task did not fall within the special expertise of the Board, and instead the task was one that the Court could address in the first instance. Andrews v. D.C. Police & Fire-

fighters Ret. & Relief Bd., 991 A.2d 763, 2010 D.C. App. LEXIS 135 (2010).

§ 2-559. Correction of errors in documents.

The Administrator of the District of Columbia Office of Documents shall correct grammatical or typographical errors in the publication of the text of a document in the District of Columbia Statutes-at-Large, the District of Columbia Register or the District of Columbia Municipal Regulations by the publication of an errata list or by publication of the entire document or the affected part of the document in its corrected form so as to indicate the actual corrections which were made.

(Oct. 21, 1968, Pub. L. 90-614, title III, § 309, as added Mar. 6, 1979, D.C. Law 2-153, § 4, 25 DCR 6960; Sept. 24, 2010, D.C. Law 18-223, § 1083(d), 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 1-1539. 1973 Ed., § 1-1539.

Effect of amendments. — D.C. Law 18-223 substituted “publication” for “printing”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1083(d) of Fiscal Year 2011 Budget Support Emergency

Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 2-153. — For legislative history of D.C. Law 2-153, see Historical and Statutory Notes following § 2-505.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 2-218.76.

§ 2-560. Certification.

Each part of the District of Columbia Statutes-at-Large, the District of Columbia Municipal Regulations, each permanent supplement of the District of Columbia Municipal Regulations, and the District of Columbia Register shall contain a certificate by the Administrator stating that such part contains all documents required to be published pursuant to this subchapter as of the date of such certificate.

(Oct. 21, 1968, Pub. L. 90-614, title III, § 310, as added Mar. 6, 1979, D.C. Law 2-153, § 4, 25 DCR 6960.)

Prior Codifications. — 1981 Ed., § 1-1540. 1973 Ed., § 1-1539.1.

Legislative history of Law 2-153. — For

legislative history of D.C. Law 2-153, see Historical and Statutory Notes following § 2-505.

§ 2-561. Presumption created by publication.

The publication of any document in the District of Columbia Statutes-at-Large, the District of Columbia Municipal Regulations, or the District of Columbia Register creates a rebuttable presumption:

- (1) That it was duly issued, prescribed, adopted, or enacted; and
- (2) That all requirements of this subchapter have been complied with.

(Oct. 21, 1968, Pub. L. 90-614, title III, § 311, as added Mar. 6, 1979, D.C. Law 2-153, § 4, 25 DCR 6960.)

Prior Codifications. — 1981 Ed., § 1-1541. 1973 Ed., § 1-1539.2.

Legislative history of Law 2-153. — For

legislative history of D.C. Law 2-153, see Historical and Statutory Notes following § 2-505.

CASE NOTES

In general.

Juvenile failed to establish that District of Columbia was not signatory to Interstate Compact on Juveniles, as would bar juvenile's rendition to Alabama under compact; District mayor's published order designating interstate juvenile compact officer was presumptive proof that District was signatory to compact, and

juvenile failed to rebut that presumption. D.C. Code 1981, §§ 1-227(e), 1-1531 to 1-1538, 1-1541, 32-1101 to 32-1106. In re O.M., 565 A.2d 573, 1989 D.C. App. LEXIS 214 (1989), writ of certiorari denied by 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953, 1990 U.S. LEXIS 1859, 58 U.S.L.W. 3658 (1990).

§ 2-562. Penalties.

Any person who knowingly and willfully causes any document not to be published in the District of Columbia Statutes-at-Large, the District of Columbia Register, or the District of Columbia Municipal Regulations which is required to be so published pursuant to this subchapter shall be guilty of a misdemeanor and shall be fined not more than \$100, or imprisoned not more than 30 days, or both.

(Oct. 21, 1968, Pub. L. 90-614, title III, § 312, as added Mar. 6, 1979, D.C. Law 2-153, § 4, 25 DCR 6960.)

Prior Codifications. — 1981 Ed., § 1-1542. 1973 Ed., § 1-1539.3.

Legislative history of Law 2-153. — For

legislative history of D.C. Law 2-153, see Historical and Statutory Notes following § 2-505.

Subchapter IV. Open Meetings.

§ 2-571. Short title.

This subchapter may be cited as the "Open Meetings Act".

(Oct. 21, 1968, Pub. L. 90-614, title IV, § 401, as added Mar. 31, 2011, D.C. Law 18-350, § 2, 58 DCR 734.)

Legislative history of Law 18-350. — Law 18-350, the "Open Meetings Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-716, which was referred to the Committee on Government Operations and the Environment. The Bill was adopted on first and

second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 19, 2011, it was assigned Act No. 18-700 and transmitted to both Houses of Congress for its review. D.C. Law 18-350 became effective on March 31, 2011.

§ 2-572. Statement of policy.

The public policy of the District is that all persons are entitled to full and complete information regarding the affairs of government and the actions of those who represent them.

(Oct. 21, 1968, Pub. L. 90-614, title IV, § 402, as added Mar. 31, 2011, D.C. Law 18-350, § 2, 58 DCR 734.)

Legislative history of Law 18-350. — For history of Law 18-350, see notes under § 2-571.

§ 2-573. Rules of construction.

This subchapter shall be construed broadly to maximize public access to meetings. Exceptions shall be construed narrowly and shall permit closure of meetings only as authorized by this chapter.

(Oct. 21, 1968, Pub. L. 90-614, title IV, § 403, as added Mar. 31, 2011, D.C. Law 18-350, § 2, 58 DCR 734.)

Legislative history of Law 18-350. — For history of Law 18-350, see notes under § 2-571.

§ 2-574. Definitions.

For the purposes of this subchapter, the term:

(1) “Meeting” means any gathering of a quorum of the members of a public body, including hearings and roundtables, whether formal or informal, regular, special, or emergency, at which the members consider, conduct, or advise on public business, including gathering information, taking testimony, discussing, deliberating, recommending, and voting, regardless whether held in person, by telephone, electronically, or by other means of communication. The term “meeting” shall not include:

(A) A chance or social gathering; provided, that it is not held to avoid the provisions of this paragraph; or

(B) A press conference.

(2) “Open Government Office” means the District of Columbia Open Government Office established by § 2-592.

(3) “Public body” means any government council, including the Council of the District of Columbia, board, commission, or similar entity, including a board of directors of an instrumentality, a board which supervises or controls an agency, or an advisory body that takes official action by the vote of its members convened for such purpose. The term “public body” shall not include:

(A) A District agency or instrumentality (other than the board which supervises or controls an agency or the board of directors of an instrumentality);

(B) The District of Columbia courts;

(C) Governing bodies of individual public charter schools;

(D) The Mayor’s cabinet;

(E) The professional or administrative staff of public bodies when they meet outside the presence of a quorum of those bodies; or

(F) Advisory Neighborhood Commissions; provided, that this subchapter shall not affect the requirements set forth in § 1-309.11.

(Oct. 21, 1968, Pub. L. 90-614, title IV, § 404, as added Mar. 31, 2011, D.C. Law 18-350, § 2, 58 DCR 734.)

Legislative history of Law 18-350. — For history of Law 18-350, see notes under § 2-571.

§ 2-575. Open meetings.

(a) Except as provided in subsection (b) of this section, a meeting shall be open to the public. A meeting shall be deemed open to the public if:

- (1) The public is permitted to be physically present;
- (2) The news media, as defined by § 16-4701, is permitted to be physically present; or
- (3) The meeting is televised.

(b) A meeting, or portion of a meeting, may be closed for the following reasons:

(1) A law or court order requires that a particular matter or proceeding not be public;

(2) To discuss, establish, or instruct the public body's staff or negotiating agents concerning the position to be taken in negotiating the price and other material terms of a contract, including an employment contract, if an open meeting would adversely affect the bargaining position or negotiating strategy of the public body;

(3) To discuss, establish, or instruct the public body's staff or negotiating agents concerning the position to be taken in negotiating incentives relating to the location or expansion of industries or other businesses or business activities in the District;

(4)(A) To consult with an attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and a public body, or to approve settlement agreements; provided, that, upon request, the public body may decide to waive the privilege.

(B) Nothing herein shall be construed to permit a public body to close a meeting that would otherwise be open merely because the attorney for the public body is a participant;

(5) Planning, discussing, or conducting specific collective bargaining negotiations;

(6) Preparation, administration, or grading of scholastic, licensing, or qualifying examinations;

(7) To prevent premature disclosure of an honorary degree, scholarship, prize, or similar award;

(8) To discuss and take action regarding specific methods and procedures to protect the public from existing or potential terrorist activity or substantial dangers to public health and safety, and to receive briefings by staff members, legal counsel, law enforcement officials, or emergency service officials concerning these methods and procedures; provided, that disclosure would endanger the public and a record of the closed session is made public if and when the public would not be endangered by that disclosure;

(9) To discuss disciplinary matters;

(10) To discuss the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials;

(11) To discuss trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

(12) To train and develop members of a public body and staff;

(13) To deliberate upon a decision in an adjudication action or proceeding by a public body exercising quasi-judicial functions; and

(14) To plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations, if disclosure to the public would harm the investigation.

(c)(1) Before a meeting or portion of a meeting may be closed, the public body shall meet in public session at which a majority of the members of the public body present vote in favor of closure.

(2) The presiding officer shall make a statement providing the reason for closure, including citations from subsection (b) of this section, and the subjects to be discussed. A copy of the roll call vote and the statement shall be provided in writing and made available to the public.

(d) A public body that meets in closed session shall not discuss or consider matters other than those matters listed under subsection (b) of this section.

(e) A public body shall not keep the number of attendees below a quorum to avoid the requirements of this section.

(f) Notwithstanding any provision of this chapter, the Council may adopt its own rules to ensure the District's open meetings policy, as established in § 2-572, is met with respect to Council meetings; provided, that the rules of the Council shall comply with this section and the definition of meeting in § 2-574(1); provided further, that until the Council adopts rules pursuant to this subsection, this subchapter shall apply to the Council.

(g) Within 60 days after March 31, 2011, the relevant committee of the Council with jurisdiction on this issue shall submit a report to the Council that presents recommendations on whether the sections of this subchapter should apply to Advisory Neighborhood Commissions.

(Oct. 21, 1968, Pub. L. 90-614, title IV, § 405, as added Mar. 31, 2011, D.C. Law 18-350, § 2, 58 DCR 734.)

Legislative history of Law 18-350. — For history of Law 18-350, see notes under § 2-571.

§ 2-576. Notice of meetings.

Before meeting in open or closed session, a public body shall provide advance public notice as follows:

(1) Notice shall be provided when meetings are scheduled and when the schedule is changed. A public body shall establish an annual schedule of its meetings, if feasible, and shall update the schedule throughout the year. Except for emergency meetings, a public body shall provide notice as early as possible, but not less than 48 hours or 2 business days, whichever is greater, before a meeting.

(2) Notice shall be provided by posting:

(A) In the office of the public body or a location that is readily accessible to the public; and

(B) On the website of the public body or the District government.

(3) Notwithstanding the notice requirement of paragraph (2) of this subsection, notice of meetings shall be published in the District of Columbia Register as timely as practicable.

(4) When a public body finds it necessary to call an emergency meeting to address an urgent matter, notice shall be provided at the same time notice is provided to members and may be provided pursuant to any method in paragraph (2) of this subsection.

(5) Each meeting notice shall include the date, time, location, and planned agenda to be covered at the meeting. If the meeting or any portion of the meeting is to be closed, the notice shall include, if feasible, a statement of intent to close the meeting or any portion of the meeting, including citations to the reason for closure under § 2-575(b), and a description of the matters to be discussed.

(Oct. 21, 1968, Pub. L. 90-614, title IV, § 406, as added Mar. 31, 2011, D.C. Law 18-350, § 2, 58 DCR 734.)

Legislative history of Law 18-350. — For history of Law 18-350, see notes under § 2-571.

§ 2-577. Meeting procedures.

(a) A meeting may be held by video conference, telephone conference, or other electronic means; provided, that:

(1) Reasonable arrangements are made to accommodate the public's right to attend the meeting;

(2) The meeting is recorded; and

(3) All votes are taken by roll call.

(b) All provisions of this subchapter shall apply to electronic meetings.

(c) E-mail exchanges between members of a public body shall not constitute an electronic meeting.

(d) When an emergency meeting is convened, the presiding officer shall open the meeting with a statement explaining the subject of the meeting, the nature of the emergency, and how public notice was provided.

(Oct. 21, 1968, Pub. L. 90-614, title IV, § 407, as added Mar. 31, 2011, D.C. Law 18-350, § 2, 58 DCR 734.)

Legislative history of Law 18-350. — For history of Law 18-350, see notes under § 2-571.

§ 2-578. Record of meetings.

(a) All meetings of public bodies, whether open or closed, shall be recorded by electronic means; provided, that if a recording is not feasible, detailed minutes of the meeting shall be kept.

(b) Copies of records shall be made available for public inspection according

to the following schedule; provided, that a record, or a portion of a record, may be withheld under the standard established for closed meetings pursuant to § 2-575(b):

(1) A copy of the minutes of a meeting shall be made available for public inspection as soon as practicable, but no later than 3 business days after the meeting.

(2) A copy of the full record, including any recording or transcript, shall be made available for public inspection as soon as practicable, but no later than 7 business days after the meeting.

(Oct. 21, 1968, Pub. L. 90-614, title IV, § 408, as added Mar. 31, 2011, D.C. Law 18-350, § 2, 58 DCR 734.)

Legislative history of Law 18-350. — For history of Law 18-350, see notes under § 2-571.

§ 2-579. Enforcement; authority.

(a) The Open Government Office may bring a lawsuit in the Superior Court of the District of Columbia for injunctive or declaratory relief for any violation of this subchapter before or after the meeting in question takes place; provided, that the Council shall adopt its own rules for enforcement related to Council meetings. Nothing in this subchapter shall:

(1) Be construed to create or imply a private cause of action for a violation of this subchapter; or

(2) Restrict the private right of action citizens have under § 1-207.42.

(b) In any lawsuit filed under this section, the burden shall be on the public body to sustain its action or proposed action. The court shall determine the matter de novo and may examine the record of a closed meeting to determine whether this section has been violated.

(c) If the court finds that a public body plans to hold a closed meeting or portion of a meeting in violation of subsection (d) of this section, the court may:

(1) Enjoin the public body from closing the meeting or portion of the meeting;

(2) Order that future meetings of the same kind be open to the public; or

(3) Order that the record of a meeting be made public.

(d) If the court finds that a resolution, rule, act, regulation, or other official action was taken, made, or enacted in violation of this subchapter, the court may order an appropriate remedy, including requiring additional forms of notice, postponing a meeting, or declaring action taken at a meeting to be void. Actions shall not be declared void unless the court finds that the balance of equities compels the action or the court concludes that the violation was not harmless.

(e) If the court finds that a member of a public body engages in a pattern or practice of willfully participating in one or more closed meetings in violation of the provisions of this subchapter, the court may impose a civil fine of not more than \$250 for each violation.

(f) The court may grant such additional relief as it finds necessary to serve the purposes of this subchapter.

(g) A public body may seek an advisory opinion from the Open Government Office regarding compliance with this subchapter.

(Oct. 21, 1968, Pub. L. 90-614, title IV, § 409, as added Mar. 31, 2011, D.C. Law 18-350, § 2, 58 DCR 734.)

Legislative history of Law 18-350. — For history of Law 18-350, see notes under § 2-571.

§ 2-580. Training.

The Office of Boards and Commissions, established December 19, 2001 (Mayor's Order 2001-189), in coordination with the Open Government Office, shall:

- (1) Develop a training manual for members of public bodies; and
- (2) Annually advise all members of public bodies of their responsibilities under this subchapter.

(Oct. 21, 1968, Pub. L. 90-614, title IV, § 410, as added Mar. 31, 2011, D.C. Law 18-350, § 2, 58 DCR 734.)

Legislative history of Law 18-350. — For history of Law 18-350, see notes under § 2-571.

Subchapter V. Open Government Office.

§ 2-591. Short title.

This subchapter may be cited as the “Open Government Office Act”.

(Oct. 21, 1968, Pub. L. 90-614, title IV, § 501, as added Mar. 31, 2011, D.C. Law 18-350, § 2, 58 DCR 734.)

Legislative history of Law 18-350. — Law 18-350, the “Open Meetings Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-716, which was referred to the Committee on Government Operations and the Environment. The Bill was adopted on first and

second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 19, 2011, it was assigned Act No. 18-700 and transmitted to both Houses of Congress for its review. D.C. Law 18-350 became effective on March 31, 2011.

§ 2-592. Establishment of the District of Columbia Open Government Office.

The District of Columbia Open Government Office (“Open Government Office”) is established as an independent office within the Board of Ethics and Government Accountability to promote open governance in the District of Columbia. All assets, staff, and unexpended appropriations of the Open Government Office shall be transferred to the Board of Ethics and Government Accountability.

(Oct. 21, 1968, Pub. L. 90-614, title IV, § 502, as added Mar. 31, 2011, D.C. Law 18-350, § 2, 58 DCR 734; Apr. 27, 2012, D.C. Law 19-124, § 501(a)(1), 59 DCR 1862.)

Effect of amendments. — D.C. Law 19-124 rewrote the section, which formerly read:

“The District of Columbia Open Government Office (‘Open Government Office’) is established as an independent agency to promote open governance in the District of Columbia.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 401(a)(1) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 18-350. — For history of Law 18-350, see notes under § 2-591.

Legislative history of Law 19-124. — Law 19-124, the “Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011”, was introduced in Council and assigned Bill No. 19-511, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 6, 2011, and December 20, 2011, respectively. Signed by the Mayor on February 27, 2012, it was assigned Act No. 19-318 and transmitted to both Houses of Congress for its review. D.C. Law 19-124 became effective on April 27, 2012.

§ 2-593. Powers and duties of the Open Government Office.

(a) The Open Government Office shall:

(1) Report annually, on or before February 1, on its activities, including recommendations for changes in the law;

(2) Issue advisory opinions to public bodies on compliance with subchapter IV of this chapter;

(3) Provide training to public bodies, officials, and employees related to subchapter IV of this chapter; and

(4) Issue rules to implement the provisions of this subchapter and subchapter IV of this chapter.

(b) The Open Government Office may bring suit to enforce § 2-579.

(c) The Open Government Office may issue advisory opinions on implementation of subchapter II of this chapter.

((Oct. 21, 1968, Pub. L. 90-614, title IV, § 503, as added Mar. 31, 2011, D.C. Law 18-350, § 2, 58 DCR 734.)

Legislative history of Law 18-350. — For history of Law 18-350, see notes under § 2-591.

§ 2-594. Director.

(a) The Open Government Office shall be headed by a Director appointed by the Board of Ethics and Government Accountability to serve a 5-year term.

(b) The Director may be reappointed and, if not reappointed, the Director shall serve until his successor has been confirmed.

(c) The Director shall not be removed before expiration of the 5-year term except for cause.

(d) The Director shall employ staff as needed.

(Oct. 21, 1968, Pub. L. 90-614, title IV, § 504, as added Mar. 31, 2011, D.C. Law 18-350, § 2, 58 DCR 734; Apr. 27, 2012, D.C. Law 19-124, § 501(a)(2), 59 DCR 1862.)

Effect of amendments. — D.C. Law 19-124 rewrote subsec. (a), which had read as follows:

“(a) The Open Government Office shall be headed by a Director appointed by the Mayor

with the advice and consent of the Council to serve a 5-year term.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 401(a)(2) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012

(D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 18-350. — For history of Law 18-350, see notes under § 2-591.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 2-592.

